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Legislative History – Montana Session Law

Chapter: Ch. 279 Session L: 2017

Bill Number: SB 29

Checklist of Bill History

History and Final Status Sheet	☑
Introduced Bill	☑
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☑

House	Senate
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): 3/24/2017	Hearing Date(s): 1/6/2017
Committee Report: 3/31/2017	Committee Report: 1/13/2017

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 7/31/2024

Notes:

AN ACT GENERALLY REVISING LAWS RELATED TO SEXUAL CRIMES; PROVIDING FOR THE CRIME OF AGGRAVATED SEXUAL ASSAULT; REMOVING THE REQUIREMENT OF FORCE FROM THE DEFINITION OF "CONSENT"; REVISING PENALTIES FOR SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 45-2-101, 45-5-501, 45-5-503, 46-18-219, 46-18-222, AND 46-23-502, MCA; AND PROVIDING AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Aggravated sexual intercourse without consent. (1) A person who uses force while knowingly having sexual intercourse with another person without consent or with another person who is incapable of consent commits the offense of aggravated sexual intercourse without consent.

(2) A person convicted of aggravated sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

Section 2. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definitions. (1) (a) As used in 45-5-502, 45-5-503, and [section 1], the term ~~"without consent"~~ "consent" means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following:

(i) ~~the victim is compelled to submit by force against the victim or another; or~~ an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;

(ii) a current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and

(iii) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

~~(ii)~~(b) ~~subject~~ Subject to subsections ~~(1)(b)~~ (1)(c) and ~~(1)(c)~~ (1)(d), the victim is incapable of consent

because the victim is:

~~(A)~~(i) mentally disordered or incapacitated;

~~(B)~~(ii) physically helpless;

~~(C)~~(iii) overcome by deception, coercion, or surprise;

~~(D)~~(iv) less than 16 years old;

~~(E)~~(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

~~(F)~~(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

~~(I)~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

~~(II)~~(B) is an employee, contractor, or volunteer of the youth care facility; or

~~(G)~~(vii) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

~~(I)~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

~~(II)~~(B) is an employee, contractor, or volunteer of the facility or community-based service.

~~(b)~~(c) Subsection ~~(1)(a)(ii)(E)~~ (1)(b)(v) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.

~~(c)~~(d) Subsections ~~(1)(a)(ii)(F)~~ (1)(b)(vi) and ~~(1)(a)(ii)(G)~~ (1)(b)(vii) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

(2) As used in ~~subsection (1)~~ [section 1], the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) As used in 45-5-502 and this section, the following definitions apply:

(a) "Parole":

(i) in the case of an adult offender, has the meaning provided in 46-1-202; and

(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

(b) "Probation" means:

(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and

(ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.

(c) "Supervising authority" includes a court, including a youth court, a county, or the department of corrections."

Section 3. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse ~~without consent~~ with another person without consent or with another person who is incapable of consent commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501~~(1)(a)(ii)(D)~~(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of ~~not less than 2 years or more than 100~~ not more than 20 years and may be fined not more than $50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section

and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender in the course of committing a violation of this section was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

(7) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section and who is the biological parent of the child resulting from the sexual intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed."

Section 4. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses

or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

~~(iii) 45-5-503, sexual intercourse without consent;~~

~~(iv)~~(iii) 45-5-625, sexual abuse of children; ~~or~~

~~(v)~~(iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or

(v) [section 1], aggravated sexual intercourse without consent.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-302, kidnapping;

(iv) 45-5-401, robbery; or

(v) 45-5-603, aggravated promotion of prostitution.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or

suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 5. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), ~~or~~ 45-5-625(4), or [section 1] and the judge determines, based on the findings contained in a

psychosexual evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

Section 6. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and

the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), [section 1], 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 5, and the provisions of Title 45, chapter 5, part 5, apply to [section 1].

Section 8. Applicability. [This act] applies to crimes committed on or after [the effective date of this act].

- END -

I hereby certify that the within bill,

SB 0029, originated in the Senate.

President of the Senate

Signed this _____ day

of _____, 2017.

Secretary of the Senate

Speaker of the House

Signed this _____ day

of _____, 2017.

SENATE BILL NO. 29

INTRODUCED BY D. SANDS

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

AN ACT GENERALLY REVISING LAWS RELATED TO SEXUAL CRIMES; PROVIDING FOR THE CRIME OF AGGRAVATED SEXUAL ASSAULT; REMOVING THE REQUIREMENT OF FORCE FROM THE DEFINITION OF "CONSENT"; REVISING PENALTIES FOR SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 45-2-101, 45-5-501, 45-5-503, 46-18-219, 46-18-222, AND 46-23-502, MCA; AND PROVIDING AN APPLICABILITY DATE.

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
05/05/17	Chapter Number Assigned				
05/04/17	(S) Signed by Governor				
05/01/17	(S) Transmitted to Governor				
04/27/17	(H) Signed by Speaker				
04/19/17	(S) Signed by President				
04/18/17	(C) Printed - Enrolled Version Available				
04/18/17	(S) Returned from Enrolling				
04/13/17	(S) Sent to Enrolling				
04/13/17	(S) 3rd Reading Passed as Amended by House		50	0	
04/13/17	(S) Scheduled for 3rd Reading				
04/12/17	(S) 2nd Reading House Amendments Concurred		48	2	
04/12/17	(S) Scheduled for 2nd Reading				
04/11/17	(H) Returned to Senate with Amendments				
04/11/17	(H) 3rd Reading Concurred		98	2	
04/11/17	(H) Scheduled for 3rd Reading				
04/10/17	(H) 2nd Reading Concurred		98	2	
04/10/17	(H) Scheduled for 2nd Reading				
03/31/17	(C) Printed - New Version Available				
03/31/17	(H) Committee Report--Bill Concurred as Amended	(H) Judiciary			
03/31/17	(H) Committee Executive Action--Bill Concurred as Amended	(H) Judiciary	19	0	
03/24/17	(H) Hearing	(H) Judiciary			
01/20/17	(H) First Reading	(H) Judiciary			
01/20/17	(H) Referred to Committee	(H) Judiciary			
01/19/17	(S) Transmitted to House				
01/19/17	(S) 3rd Reading Passed		46	0	
01/19/17	(S) Scheduled for 3rd Reading				
01/18/17	(S) 2nd Reading Passed		48	0	
01/18/17	(S) Scheduled for 2nd Reading				
01/16/17	(C) Printed - New Version Available				
01/16/17	(S) Committee Report--Bill Passed as Amended	(S) Judiciary			

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
01/13/17	(S) Committee Executive Action--Bill Passed as Amended	(S) Judiciary	11	0	
01/06/17	(S) Hearing	(S) Judiciary			
01/03/17	(S) Fiscal Note Printed				
01/02/17	(S) Fiscal Note Signed				
01/02/17	(S) First Reading				
01/02/17	(S) Fiscal Note Received				
12/08/16	(S) Referred to Committee	(S) Judiciary			
12/08/16	(S) Fiscal Note Requested				
12/08/16	(C) Introduced Bill Text Available Electronically				
12/08/16	(S) Introduced				
11/30/16	(C) Pre-Introduction Letter Sent				
11/30/16	(C) Draft in Assembly				
11/30/16	(C) Executive Director Review				
11/29/16	(C) Bill Draft Text Available Electronically				
11/29/16	(C) Draft in Final Drafter Review				
11/22/16	(C) Draft in Input/Proofing				
11/22/16	(C) Draft to Drafter - Edit Review [SMH]				
11/18/16	(C) Draft in Edit				
11/15/16	(C) Draft in Legal Review				
11/15/16	(C) Fiscal Note Probable				
11/08/16	(C) Draft to Requester for Review				
09/02/16	(C) Draft Request Received				

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2019 Biennium

Bill #	SB0029	**Title:**	Revising laws regarding sexual crimes
Primary Sponsor:	Sands, Diane	**Status:**	As Introduced

✓Significant Local Gov Impact ☐Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2018 Difference	FY 2019 Difference	FY 2020 Difference	FY 2021 Difference
Expenditures:				
General Fund		- - - - - - - - - - Unknown - - - - - - - - - -		
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:				

Description of fiscal impact: As individuals are accused and/or convicted under the laws amended in SB 29, there would be additional fiscal impact to the state. However, the fiscal impact cannot be determined.

FISCAL ANALYSIS

Assumptions:

Judicial Branch

1. This bill revises laws related to privacy in communications; provides that the distribution of sexual images without the consent of the person depicted is illegal and provides an applicability date.
2. The number of youth court and district court cases may increase as a result of this legislation; however, the Judicial Branch is unable to estimate the impact on probation or judicial workload or the fiscal impact. The cumulative impact of such legislation may eventually require additional judicial resources because court dockets currently are full in many judicial districts throughout the state.

Department of Corrections

3. This bill could increase prison populations with the addition of the new crime. However, because the number of new convictions is unknown, the Department of Corrections is unable to determine the fiscal impact.
4. If a person is convicted of a felony under the new language, the cost of incarceration is $42,647 per year per male inmate and $42,063 per year per female inmate.
5. The amendment to add Section 36 to the Montana Constitution, known as Marsy's Law, substantially expands the definition of a victim and requires that victims be notified of and have the option to be present at all proceedings that

involve preparing an offender for actual or potential release or alternative placement. The Department of Corrections therefore anticipates that the implementation of Marsy's Law will increase the cost of any bill that could involve victim notification.

Effect on County or Other Local Revenues or Expenditures:

1. SB 29 may result in more offenders being charged and prosecuted. Counties would be responsible for the fiscal impacts to the county attorney's office as well as for the costs of incarceration from the time of arrest until the charge has been adjudicated and the defendant is found innocent and released or upon the oral pronouncement of sentence upon conviction so counties would experience some higher costs if the number of cases increase due to the passage of this bill.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

AN ACT GENERALLY REVISING LAWS RELATED TO SEXUAL CRIMES; PROVIDING FOR THE CRIME OF AGGRAVATED SEXUAL ASSAULT; REMOVING THE REQUIREMENT OF FORCE FROM THE DEFINITION OF "CONSENT"; REVISING PENALTIES FOR SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 45-2-101, 45-5-501, 45-5-503, 46-18-219, 46-18-222, AND 46-23-502, MCA; AND PROVIDING AN APPLICABILITY DATE.

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(2) A person convicted of aggravated sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

Section 2. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definitions. (1) (a) As used in 45-5-502, 45-5-503, and [section 1], the term ~~"without consent"~~ "consent" means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following:

(i) ~~the victim is compelled to submit by force against the victim or another; or~~ an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;

(ii) a current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and

(iii) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

~~(ii)~~(b) ~~subject~~ Subject to subsections ~~(1)(b)~~ (1)(c) and ~~(1)(c)~~ (1)(d), the victim is incapable of consent

because the victim is:

~~(A)~~(i) mentally disordered or incapacitated;

~~(B)~~(ii) physically helpless;

~~(C)~~(iii) overcome by deception, coercion, or surprise;

~~(D)~~(iv) less than 16 years old;

~~(E)~~(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

~~(F)~~(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

~~(I)~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

~~(II)~~(B) is an employee, contractor, or volunteer of the youth care facility; or

~~(G)~~(vii) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

~~(I)~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

~~(II)~~(B) is an employee, contractor, or volunteer of the facility or community-based service.

~~(b)~~(c) Subsection ~~(1)(a)(ii)(E)~~ (1)(b)(v) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.

~~(c)~~(d) Subsections ~~(1)(a)(ii)(F)~~ (1)(b)(vi) and ~~(1)(a)(ii)(G)~~ (1)(b)(vii) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

(2) As used in ~~subsection (1)~~ [section 1], the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) As used in 45-5-502 and this section, the following definitions apply:

(a) "Parole":

(i) in the case of an adult offender, has the meaning provided in 46-1-202; and

(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

(b) "Probation" means:

(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and

(ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.

(c) "Supervising authority" includes a court, including a youth court, a county, or the department of corrections."

Section 3. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse ~~without consent~~ with another person without consent or with another person who is incapable of consent commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501~~(1)(a)(ii)(D)~~(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of ~~not less than 2 years or more than 100~~ not more than 20 years and may be fined not more than $50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section

and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender in the course of committing a violation of this section was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

(7) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section and who is the biological parent of the child resulting from the sexual intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed."

Section 4. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses

or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

~~(iii) 45-5-503, sexual intercourse without consent;~~

~~(iv)~~(iii) 45-5-625, sexual abuse of children; ~~or~~

~~(v)~~(iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or

(v) [section 1], aggravated sexual intercourse without consent.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-302, kidnapping;

(iv) 45-5-401, robbery; or

(v) 45-5-603, aggravated promotion of prostitution.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or

suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 5. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), ~~or~~ 45-5-625(4), or [section 1] and the judge determines, based on the findings contained in a

psychosexual evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

Section 6. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and

the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), [section 1], 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 5, and the provisions of Title 45, chapter 5, part 5, apply to [section 1].

Section 8. Applicability. [This act] applies to crimes committed on or after [the effective date of this act].

- END -

I hereby certify that the within bill,

SB 0029, originated in the Senate.

President of the Senate

Signed this _____ day

of _____, 2017.

Secretary of the Senate

Speaker of the House

Signed this _____ day

of _____, 2017.

SENATE BILL NO. 29

INTRODUCED BY D. SANDS

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

AN ACT GENERALLY REVISING LAWS RELATED TO SEXUAL CRIMES; PROVIDING FOR THE CRIME OF AGGRAVATED SEXUAL ASSAULT; REMOVING THE REQUIREMENT OF FORCE FROM THE DEFINITION OF "CONSENT"; REVISING PENALTIES FOR SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 45-2-101, 45-5-501, 45-5-503, 46-18-219, 46-18-222, AND 46-23-502, MCA; AND PROVIDING AN APPLICABILITY DATE.

SENATE BILL NO. 29

INTRODUCED BY D. SANDS

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO SEXUAL CRIMES; PROVIDING FOR THE CRIME OF AGGRAVATED SEXUAL ASSAULT; REMOVING THE REQUIREMENT OF FORCE FROM THE DEFINITION OF "CONSENT"; REVISING THE DEFINITIONS OF "MENTALLY DISORDERED" AND "MENTALLY INCAPACITATED" FOR ALL CRIMES; REVISING PENALTIES FOR SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 45-2-101, 45-5-501, 45-5-503, 46-18-219, AND 46-18-222, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Aggravated sexual intercourse without consent.** (1) A person who uses force while knowingly having sexual intercourse with another person without consent or with another person who is incapable of consent commits the offense of aggravated sexual intercourse without consent.

(2) A person convicted of aggravated sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

Section 2. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.

(7) "Cohabit" means to live together under the representation of being married.

(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(15) "Conduct" means an act or series of acts and the accompanying mental state.

(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

(18) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(20) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(21) "Deviate sexual relations" means any form of sexual intercourse with an animal.

(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against

any individual.

(25) A "frisk" is a search by an external patting of a person's clothing.

(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(29) "Human being" means a person who has been born and is alive.

(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(31) "Inmate" means a person who is confined in a correctional institution.

(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(33) An "involuntary act" means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When

knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(37) "Medicaid agency" has the meaning in 53-6-155.

(38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes related documents submitted as a part of or in support of the claim.

(40) "Mentally disordered" means that a person suffers from a mental disease or disorder ~~that renders the person incapable of appreciating the nature of the person's own conduct~~ that substantially impairs the person's ability to appraise or control the person's own conduct or to appraise the conduct of others.

(41) "Mentally incapacitated" means that ~~a person is rendered temporarily incapable of appreciating or controlling the person's own conduct~~ a person's ability to appraise or control the person's own conduct or to appraise the conduct of others is substantially impaired as a result of the influence of an intoxicating substance.

(42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

(43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

(45) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present, including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(60) "Premises" includes any type of structure or building and real property.

(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(63) "Public place" means a place to which the public or a substantial group has access.

(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.

(b) The term does not include witnesses.

(65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(66) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another,

directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(71) "Statute" means an act of the legislature of this state.

(72) "Stolen property" means property over which control has been obtained by theft.

(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(75) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

(76) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $1,500 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than $1,500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 3. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definitions. (1) (a) As used in 45-5-502, 45-5-503, and [section 1], the term ~~"without consent"~~ "consent" means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following:

(i) ~~the victim is compelled to submit by force against the victim or another; or~~ an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;

(ii) a current or previous dating or social or sexual relationship or the manner of dress of the person involved with the accused in the conduct at issue does not by itself constitute consent; and

(iii) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

~~(ii)~~(b) ~~subject~~ Subject to subsections ~~(1)(b)~~ (1)(c) and ~~(1)(c)~~ (1)(d), the victim is incapable of consent because the victim is:

~~(A)~~(i) mentally disordered or incapacitated;

~~(B)~~(ii) physically helpless;

~~(C)~~(iii) overcome by deception, coercion, or surprise;

~~(D)~~(iv) less than 16 years old;

~~(E)~~(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

~~(F)~~(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

~~(I)~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

~~(II)~~(B) is an employee, contractor, or volunteer of the youth care facility; or

~~(G)~~(vii) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

~~(I)~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

~~(II)~~(B) is an employee, contractor, or volunteer of the facility or community-based service.

~~(b)~~(c) Subsection ~~(1)(a)(ii)(E)~~ (1)(b)(v) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.

~~(c)~~(d) Subsections ~~(1)(a)(ii)(F)~~ (1)(b)(vi) and ~~(1)(a)(ii)(G)~~ (1)(b)(vii) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

(2) As used in ~~subsection (1)~~ [section 1], the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) As used in 45-5-502 and this section, the following definitions apply:

(a) "Parole":

(i) in the case of an adult offender, has the meaning provided in 46-1-202; and

(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

(b) "Probation" means:

(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and

(ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.

(c) "Supervising authority" includes a court, including a youth court, a county, or the department of corrections."

Section 4. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse ~~without consent~~ with another person without consent or with another person who is incapable of consent commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501~~(1)(a)(ii)(D)~~(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of ~~not less than 2 years or more than 100~~ not more than 20 years and may be fined not more than $50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender in the course of committing sexual intercourse without consent was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

(7) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section and who is the biological parent of the child resulting from the sexual intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed."

Section 5. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

~~(iii) 45-5-503, sexual intercourse without consent;~~

~~(iv)~~(iii) 45-5-625, sexual abuse of children; ~~or~~

~~(v)~~(iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or

(v) [section 1], aggravated sexual intercourse without consent.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that,

if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-302, kidnapping;

(iv) 45-5-401, robbery; or

(v) 45-5-603, aggravated promotion of prostitution.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 6. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences

prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), ~~or~~ 45-5-625(4), or [section 1] and the judge determines, based on the findings contained in a psychosexual evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 5, and the provisions of Title 45, chapter 5, part 5, apply to [section 1].

NEW SECTION. **Section 8. Applicability.** [This act] applies to crimes committed on or after [the

effective date of this act].

- END -

SENATE BILL NO. 29

INTRODUCED BY D. SANDS

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO SEXUAL CRIMES; PROVIDING FOR THE CRIME OF AGGRAVATED SEXUAL ASSAULT; REMOVING THE REQUIREMENT OF FORCE FROM THE DEFINITION OF "CONSENT"; ~~REVISING THE DEFINITIONS OF "MENTALLY DISORDERED" AND "MENTALLY INCAPACITATED" FOR ALL CRIMES;~~ REVISING PENALTIES FOR SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 45-2-101, 45-5-501, 45-5-503, 46-18-219, ~~AND~~ 46-18-222, AND 46-23-502, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Aggravated sexual intercourse without consent.** (1) A person who uses force while knowingly having sexual intercourse with another person without consent or with another person who is incapable of consent commits the offense of aggravated sexual intercourse without consent.

(2) A person convicted of aggravated sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

~~**Section 2.** Section 45-2-101, MCA, is amended to read:~~

~~**"45-2-101. General definitions.** Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:~~

~~(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.~~

~~(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.~~

~~(3) "Another" means a person or persons other than the offender.~~

~~(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.~~

~~(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.~~

~~(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.~~

~~(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.~~

~~(7) "Cohabit" means to live together under the representation of being married.~~

~~(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.~~

~~(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.~~

~~(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.~~

~~(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.~~

~~(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.~~

~~(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.~~

~~(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.~~

~~(15) "Conduct" means an act or series of acts and the accompanying mental state.~~

~~(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.~~

~~(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.~~

~~(18) "Deception" means knowingly to:~~

~~(a) create or confirm in another an impression that is false and that the offender does not believe to be true;~~

~~(b) fail to correct a false impression that the offender previously has created or confirmed;~~

~~(c) prevent another from acquiring information pertinent to the disposition of the property involved;~~

~~(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or~~

~~(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.~~

~~(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.~~

~~(20) "Deprive" means:~~

~~(a) to withhold property of another:~~

~~(i) permanently;~~

~~(ii) for such a period as to appropriate a portion of its value; or~~

~~(iii) with the purpose to restore it only upon payment of reward or other compensation; or~~

~~(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.~~

~~(21) "Deviate sexual relations" means any form of sexual intercourse with an animal.~~

~~(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.~~

~~(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.~~

~~(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against~~

~~any individual.~~

~~(25) A "frisk" is a search by an external patting of a person's clothing.~~

~~(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.~~

~~(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.~~

~~(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.~~

~~(29) "Human being" means a person who has been born and is alive.~~

~~(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.~~

~~(31) "Inmate" means a person who is confined in a correctional institution.~~

~~(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.~~

~~(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.~~

~~(33) An "involuntary act" means an act that is:~~

~~(a) a reflex or convulsion;~~

~~(b) a bodily movement during unconsciousness or sleep;~~

~~(c) conduct during hypnosis or resulting from hypnotic suggestion; or~~

~~(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.~~

~~(34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.~~

~~(35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When~~

~~knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.~~

~~(36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.~~

~~(37) "Medicaid agency" has the meaning in 53-6-155.~~

~~(38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.~~

~~(39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:~~

~~(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or~~

~~(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.~~

~~(b) The term includes related documents submitted as a part of or in support of the claim.~~

~~(40) "Mentally disordered" means that a person suffers from a mental disease or disorder that renders the person incapable of appreciating the nature of the person's own conduct~~ that substantially impairs the person's ability to appraise or control the person's own conduct or to appraise the conduct of others~~.~~

~~(41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct~~ a person's ability to appraise or control the person's own conduct or to appraise the conduct of others is substantially impaired ~~as a result of the influence of an intoxicating substance.~~

~~(42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.~~

~~(43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.~~

~~(44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.~~

~~(45) "Obtain" means:~~

~~(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and~~

~~(b) in relation to labor or services, to secure the performance of the labor or service.~~

~~(46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.~~

~~(47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present, including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.~~

~~(48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.~~

~~(49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.~~

~~(50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.~~

~~(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.~~

~~(51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.~~

~~(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.~~

~~(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.~~

~~(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.~~

~~(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.~~

~~(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.~~

~~(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.~~

~~(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.~~

~~(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.~~

~~(60) "Premises" includes any type of structure or building and real property.~~

~~(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:~~

~~(a) real estate;~~

~~(b) money;~~

~~(c) commercial instruments;~~

~~(d) admission or transportation tickets;~~

~~(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;~~

~~(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;~~

~~(g) electricity, gas, and water;~~

~~(h) birds, animals, and fish that ordinarily are kept in a state of confinement;~~

~~(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;~~

~~(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and~~

~~(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.~~

~~(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.~~

~~(63) "Public place" means a place to which the public or a substantial group has access.~~

~~(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.~~

~~(b) The term does not include witnesses.~~

~~(65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.~~

~~(66) (a) "Serious bodily injury" means bodily injury that:~~

~~(i) creates a substantial risk of death;~~

~~(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or~~

~~(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.~~

~~(b) The term includes serious mental illness or impairment.~~

~~(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another,~~

~~directly or through clothing, in order to knowingly or purposely:~~

~~(a) cause bodily injury to or humiliate, harass, or degrade another; or~~

~~(b) arouse or gratify the sexual response or desire of either party.~~

~~(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:~~

~~(i) cause bodily injury or humiliate, harass, or degrade; or~~

~~(ii) arouse or gratify the sexual response or desire of either party.~~

~~(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.~~

~~(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.~~

~~(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.~~

~~(71) "Statute" means an act of the legislature of this state.~~

~~(72) "Stolen property" means property over which control has been obtained by theft.~~

~~(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.~~

~~(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.~~

~~(75) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.~~

~~(76) "Threat" means a menace, however communicated, to:~~

~~(a) inflict physical harm on the person threatened or any other person or on property;~~

~~(b) subject any person to physical confinement or restraint;~~

~~(c) commit a criminal offense;~~

~~(d) accuse a person of a criminal offense;~~

~~(e) expose a person to hatred, contempt, or ridicule;~~

~~(f) harm the credit or business repute of a person;~~

~~(g) reveal information sought to be concealed by the person threatened;~~

~~(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;~~

~~(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or~~

~~(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.~~

~~(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:~~

~~(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.~~

~~(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.~~

~~(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.~~

~~(b) When it cannot be determined if the value of the property is more or less than $1,500 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than $1,500.~~

~~(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.~~

~~(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.~~

~~(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.~~

~~(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."~~

Section 2. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definitions. (1) (a) As used in 45-5-502, 45-5-503, and [section 1], the term ~~"without consent"~~ "consent" means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following:

(i) ~~the victim is compelled to submit by force against the victim or another; or~~ an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;

(ii) a current or previous dating or social or sexual relationship or the manner of dress of the person involved with the accused in the conduct at issue does not by itself constitute consent; and

(iii) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

~~(ii)~~(b) ~~subject~~ Subject to subsections ~~(1)(b)~~ (1)(c) and ~~(1)(c)~~ (1)(d), the victim is incapable of consent because the victim is:

~~(A)~~(i) mentally disordered or incapacitated;

~~(B)~~(ii) physically helpless;

~~(C)~~(iii) overcome by deception, coercion, or surprise;

~~(D)~~(iv) less than 16 years old;

~~(E)~~(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

~~(F)~~(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

~~(I)~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

~~(II)~~(B) is an employee, contractor, or volunteer of the youth care facility; or

~~(G)~~(vii) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

~~(I)~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

~~(II)~~(B) is an employee, contractor, or volunteer of the facility or community-based service.

~~(b)~~(c) Subsection ~~(1)(a)(ii)(E)~~ (1)(b)(v) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.

~~(c)~~(d) Subsections ~~(1)(a)(ii)(F)~~ (1)(b)(vi) and ~~(1)(a)(ii)(G)~~ (1)(b)(vii) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

(2) As used in ~~subsection (1)~~ [section 1], the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) As used in 45-5-502 and this section, the following definitions apply:

(a) "Parole":

(i) in the case of an adult offender, has the meaning provided in 46-1-202; and

(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

(b) "Probation" means:

(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and

(ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.

(c) "Supervising authority" includes a court, including a youth court, a county, or the department of corrections."

Section 3. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse ~~without consent~~ with another person without consent or with another person who is incapable of consent commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501~~(1)(a)(ii)(D)~~(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of ~~not less than 2 years or more than 100~~ not more than 20 years and may be fined not more than $50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender in the course of committing ~~sexual intercourse without consent~~ A VIOLATION OF THIS SECTION was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and

behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

(7) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section and who is the biological parent of the child resulting from the sexual intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed."

Section 4. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

~~(iii) 45-5-503, sexual intercourse without consent;~~

~~(iv)~~(iii) 45-5-625, sexual abuse of children; ~~or~~

~~(v)~~(iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or

(v) [section 1], aggravated sexual intercourse without consent.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that,

if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-302, kidnapping;

(iv) 45-5-401, robbery; or

(v) 45-5-603, aggravated promotion of prostitution.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 5. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences

prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), ~~or~~ 45-5-625(4), or [section 1] and the judge determines, based on the findings contained in a psychosexual evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

SECTION 6. SECTION 46-23-502, MCA, IS AMENDED TO READ:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,

or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), [section 1], 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is

reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 5, and the provisions of Title 45, chapter 5, part 5, apply to [section 1].

NEW SECTION. **Section 8. Applicability.** [This act] applies to crimes committed on or after [the effective date of this act].

- END -

SENATE BILL NO. 29

INTRODUCED BY D. SANDS

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO SEXUAL CRIMES; PROVIDING FOR THE CRIME OF AGGRAVATED SEXUAL ASSAULT; REMOVING THE REQUIREMENT OF FORCE FROM THE DEFINITION OF "CONSENT"; ~~REVISING THE DEFINITIONS OF "MENTALLY DISORDERED" AND "MENTALLY INCAPACITATED" FOR ALL CRIMES;~~ REVISING PENALTIES FOR SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 45-2-101, 45-5-501, 45-5-503, 46-18-219, ~~AND~~ 46-18-222, AND 46-23-502, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Aggravated sexual intercourse without consent.** (1) A person who uses force while knowingly having sexual intercourse with another person without consent or with another person who is incapable of consent commits the offense of aggravated sexual intercourse without consent.

(2) A person convicted of aggravated sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

~~**Section 2.** Section 45-2-101, MCA, is amended to read:~~

~~**"45-2-101. General definitions.** Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:~~

~~(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.~~

~~(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.~~

~~(3) "Another" means a person or persons other than the offender.~~

~~(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.~~

~~(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.~~

~~(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.~~

~~(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.~~

~~(7) "Cohabit" means to live together under the representation of being married.~~

~~(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.~~

~~(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.~~

~~(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.~~

~~(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.~~

~~(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.~~

~~(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.~~

~~(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.~~

~~(15) "Conduct" means an act or series of acts and the accompanying mental state.~~

~~(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.~~

~~(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.~~

~~(18) "Deception" means knowingly to:~~

~~(a) create or confirm in another an impression that is false and that the offender does not believe to be true;~~

~~(b) fail to correct a false impression that the offender previously has created or confirmed;~~

~~(c) prevent another from acquiring information pertinent to the disposition of the property involved;~~

~~(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or~~

~~(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.~~

~~(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.~~

~~(20) "Deprive" means:~~

~~(a) to withhold property of another:~~

~~(i) permanently;~~

~~(ii) for such a period as to appropriate a portion of its value; or~~

~~(iii) with the purpose to restore it only upon payment of reward or other compensation; or~~

~~(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.~~

~~(21) "Deviate sexual relations" means any form of sexual intercourse with an animal.~~

~~(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.~~

~~(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.~~

~~(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against~~

~~any individual.~~

~~(25) A "frisk" is a search by an external patting of a person's clothing.~~

~~(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.~~

~~(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.~~

~~(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.~~

~~(29) "Human being" means a person who has been born and is alive.~~

~~(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.~~

~~(31) "Inmate" means a person who is confined in a correctional institution.~~

~~(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.~~

~~(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.~~

~~(33) An "involuntary act" means an act that is:~~

~~(a) a reflex or convulsion;~~

~~(b) a bodily movement during unconsciousness or sleep;~~

~~(c) conduct during hypnosis or resulting from hypnotic suggestion; or~~

~~(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.~~

~~(34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.~~

~~(35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When~~

~~knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.~~

~~(36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.~~

~~(37) "Medicaid agency" has the meaning in 53-6-155.~~

~~(38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.~~

~~(39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:~~

~~(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or~~

~~(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.~~

~~(b) The term includes related documents submitted as a part of or in support of the claim.~~

~~(40) "Mentally disordered" means that a person suffers from a mental disease or disorder that renders the person incapable of appreciating the nature of the person's own conduct~~ that substantially impairs the person's ability to appraise or control the person's own conduct or to appraise the conduct of others~~.~~

~~(41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct~~ a person's ability to appraise or control the person's own conduct or to appraise the conduct of others is substantially impaired ~~as a result of the influence of an intoxicating substance.~~

~~(42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.~~

~~(43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.~~

~~(44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.~~

~~(45) "Obtain" means:~~

~~(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and~~

~~(b) in relation to labor or services, to secure the performance of the labor or service.~~

~~(46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.~~

~~(47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present, including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.~~

~~(48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.~~

~~(49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.~~

~~(50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.~~

~~(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.~~

~~(51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.~~

~~(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.~~

~~(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.~~

~~(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.~~

~~(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.~~

~~(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.~~

~~(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.~~

~~(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.~~

~~(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.~~

~~(60) "Premises" includes any type of structure or building and real property.~~

~~(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:~~

~~(a) real estate;~~

~~(b) money;~~

~~(c) commercial instruments;~~

~~(d) admission or transportation tickets;~~

~~(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;~~

~~(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;~~

~~(g) electricity, gas, and water;~~

~~(h) birds, animals, and fish that ordinarily are kept in a state of confinement;~~

~~(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;~~

~~(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and~~

~~(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.~~

~~(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.~~

~~(63) "Public place" means a place to which the public or a substantial group has access.~~

~~(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.~~

~~(b) The term does not include witnesses.~~

~~(65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.~~

~~(66) (a) "Serious bodily injury" means bodily injury that:~~

~~(i) creates a substantial risk of death;~~

~~(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or~~

~~(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.~~

~~(b) The term includes serious mental illness or impairment.~~

~~(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another,~~

~~directly or through clothing, in order to knowingly or purposely:~~

~~(a) cause bodily injury to or humiliate, harass, or degrade another; or~~

~~(b) arouse or gratify the sexual response or desire of either party.~~

~~(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:~~

~~(i) cause bodily injury or humiliate, harass, or degrade; or~~

~~(ii) arouse or gratify the sexual response or desire of either party.~~

~~(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.~~

~~(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.~~

~~(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.~~

~~(71) "Statute" means an act of the legislature of this state.~~

~~(72) "Stolen property" means property over which control has been obtained by theft.~~

~~(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.~~

~~(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.~~

~~(75) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.~~

~~(76) "Threat" means a menace, however communicated, to:~~

~~(a) inflict physical harm on the person threatened or any other person or on property;~~

~~(b) subject any person to physical confinement or restraint;~~

~~(c) commit a criminal offense;~~

~~(d) accuse a person of a criminal offense;~~

~~(e) expose a person to hatred, contempt, or ridicule;~~

~~(f) harm the credit or business repute of a person;~~

~~(g) reveal information sought to be concealed by the person threatened;~~

~~(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;~~

~~(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or~~

~~(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.~~

~~(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:~~

~~(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.~~

~~(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.~~

~~(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.~~

~~(b) When it cannot be determined if the value of the property is more or less than $1,500 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than $1,500.~~

~~(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.~~

~~(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.~~

~~(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.~~

~~(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."~~

Section 2. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definitions. (1) (a) As used in 45-5-502, 45-5-503, and [section 1], the term ~~"without consent"~~ "consent" means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following:

(i) ~~the victim is compelled to submit by force against the victim or another; or~~ an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;

(ii) a current or previous dating or social or sexual relationship BY ITSELF or the manner of dress of the person involved with the accused in the conduct at issue does not ~~by itself~~ constitute consent; and

(iii) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

~~(ii)~~(b) ~~subject~~ Subject to subsections ~~(1)(b)~~ (1)(c) and ~~(1)(c)~~ (1)(d), the victim is incapable of consent because the victim is:

~~(A)~~(i) mentally disordered or incapacitated;

~~(B)~~(ii) physically helpless;

~~(C)~~(iii) overcome by deception, coercion, or surprise;

~~(D)~~(iv) less than 16 years old;

~~(E)~~(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

~~(F)~~(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

~~(I)~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

~~(II)~~(B) is an employee, contractor, or volunteer of the youth care facility; or

~~(G)~~(vii) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

~~(I)~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

~~(II)~~(B) is an employee, contractor, or volunteer of the facility or community-based service.

~~(b)~~(c) Subsection ~~(1)(a)(ii)(E)~~ (1)(b)(v) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.

~~(c)~~(d) Subsections ~~(1)(a)(ii)(F)~~ (1)(b)(vi) and ~~(1)(a)(ii)(G)~~ (1)(b)(vii) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

(2) As used in ~~subsection (1)~~ [section 1], the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) As used in 45-5-502 and this section, the following definitions apply:

(a) "Parole":

(i) in the case of an adult offender, has the meaning provided in 46-1-202; and

(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

(b) "Probation" means:

(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and

(ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.

(c) "Supervising authority" includes a court, including a youth court, a county, or the department of corrections."

Section 3. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse ~~without consent~~ with another person without consent or with another person who is incapable of consent commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501~~(1)(a)(ii)(D)~~(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of ~~not less than 2 years or more than 100~~ not more than 20 years and may be fined not more than $50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender in the course of committing ~~sexual intercourse without consent~~ A VIOLATION OF THIS SECTION was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and

behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

(7) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section and who is the biological parent of the child resulting from the sexual intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed."

Section 4. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

~~(iii) 45-5-503, sexual intercourse without consent;~~

~~(iv)~~(iii) 45-5-625, sexual abuse of children; ~~or~~

~~(v)~~(iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or

(v) [section 1], aggravated sexual intercourse without consent.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that,

if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-302, kidnapping;

(iv) 45-5-401, robbery; or

(v) 45-5-603, aggravated promotion of prostitution.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 5. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences

prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), ~~or~~ 45-5-625(4), or [section 1] and the judge determines, based on the findings contained in a psychosexual evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

SECTION 6. SECTION 46-23-502, MCA, IS AMENDED TO READ:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,

or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), [section 1], 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is

reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 5, and the provisions of Title 45, chapter 5, part 5, apply to [section 1].

NEW SECTION. **Section 8. Applicability.** [This act] applies to crimes committed on or after [the effective date of this act].

- END -

MINUTES

MONTANA SENATE
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on January 6, 2017 at 8:00 AM, in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Keith Regier, Chair (R)
Sen. Jennifer Fielder, Vice Chair (R)
Sen. Jen Gross (D)
Sen. Steve Hinebauch (R)
Sen. Jedediah Hinkle (R)
Sen. Margaret (Margie) MacDonald (D)
Sen. Mary Moe (D)
Sen. Scott Sales (R)
Sen. Diane Sands (D)
Sen. Nels Swandal (R)
Sen. Chas Vincent (R)

Members Excused: None

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 22, 1/2/2017; SB 29, 1/2/2017; SB 30, 1/2/2017 SB 20-Do Pass, SB 21-Do Pass

HEARING ON SB 22

Opening Statement by Sponsor:

00:01:44 Sen. Sue Malek (D), SD 46, opened the hearing on SB 22, Revise laws re termination of parental rights when child is result of rape.
EXHIBIT(jus05a01)

Proponents' Testimony:

00:04:51 Robin Turner, director, Public Policy, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
EXHIBIT(jus05a02)

00:10:36 Deb Matteucci, director, Montana Board of Crime Control (MBCC)
EXHIBIT(jus05a03)
EXHIBIT(jus05a04)

00:13:30 Ole Olson, prosecutor, assistant attorney general, Department of Justice (DOJ)
00:14:41 Tracy Vaughn, Montana Sex Offender Treatment Association (MSOTA)

Opponents' Testimony:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

00:15:25 Sen. Moe
00:16:12 Mr. Olson, DOJ
00:16:47 Chairman Regier
00:17:04 Mr. Olson

Closing by Sponsor:

00:17:29 Sen. Malek

HEARING ON SB 29

Opening Statement by Sponsor:

00:19:08 Sen. Diane Sands (D), SD 49, opened the hearing on SB 29, Revising laws regarding sexual crimes.
EXHIBIT(jus05a05)

00:32:06 Julianne Burkhardt, Legislative Services Division (LSD)

Proponents' Testimony:

00:32:47 Jennifer Clark, self, prosecutor, County of Missoula
00:50:45 Ole Olson, prosecutor, assistant attorney general, Department of Justice (DOJ)
00:55:49 Melinda Reed, executive director, Friendship Center, Helena
00:57:14 Mark Murphy, Montana County Attorneys Association (MCAA)
01:00:01 Abbigail Belcher, Associated Students of University of Montana (ASUM), Missoula
01:00:23 Debbie Matteucci, director, Montana Board of Crime Control (MBCC)
01:02:03 Tracy Vaughn, Montana Sex Offender Treatment Association (MSOTA)
01:05:07 Christina Powell, Sexual Assault Counseling Center (SACC), Bozeman
01:10:44 Robin Turner, director, Public Policy, Montana Coalition Against Domestic and Sexual Violence (MCASDV)

EXHIBIT(jus05a06)
EXHIBIT(jus05a07)

01:12:38 Beth Brenneman, Disability Rights Montana (DRM)

Opponents' Testimony:

None

Informational Testimony:

01:14:01 Lieutenant Colonel Beverly Schneider, attorney, Department of Military Affairs (DMA)

Questions from Committee Members and Responses:

01:15:31 Sen. Fielder
01:16:06 Ms. Brenneman, DRM
01:17:51 Sen. Fielder
01:18:18 Mr. Olson, DOJ
01:21:11 Sen. Fielder
01:21:41 Sen. Sands
01:24:27 Sen. Swandal
01:24:57 Ms. Matteucci, MBCC
01:25:58 Sen. Swandal
01:26:47 Mr. Vaughn, MSOTA
01:28:34 Sen. MacDonald
01:29:13 Ms. Clark, self
01:30:01 Chairman Regier
01:30:10 Ms. Clark
01:31:19 Sen. Moe
01:31:42 Ms. Schneider, DMA
01:33:11 Sen. Moe
01:33:33 Ms. Powell, SACC
01:34:32 Sen. Hinkle
01:36:45 Sen. Sands
01:37:38 Mr. Olson

Closing by Sponsor:

01:38:39 Sen. Sands

HEARING ON SB 30

Opening Statement by Sponsor:

01:43:09 Sen. Diane Sands (D), SD 49, opened the hearing on SB 30, Revise laws related to criminal statute of limitations.

Proponents' Testimony:

01:48:46 Tracy Vaughn, Montana Sex Offenders Treatment Association (MSOTA)
01:49:18 Ole Olson, prosecutor, assistant attorney general, Department of Justice (DOJ)
01:51:05 Christina Powell, Sexual Assault Counseling Center (SACC), Bozeman
01:54:03 Robin Turner, Montana Coalition Against Domestic and Sexual Violence (MCADSV)

Opponents' Testimony:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

01:55:33 Sen. Moe
01:56:05 Sen. Sands
01:58:56 Sen. Fielder
01:59:35 Sen. Sands
01:59:55 Mr. Olson, DOJ
02:00:18 Sen. Fielder
02:00:28 Sen. Sands
02:00:51 Sen. Fielder
02:02:16 Chairman Regier
02:02:30 Mr. Olson
02:02:37 Sen. Vincent
02:03:38 Sen. Sands

Closing by Sponsor:

02:04:22 Sen. Sands

02:05:13 Brief Recess
02:20:26 Reconvene

EXECUTIVE ACTION ON SB 20

02:20:50 **Motion/Vote:** Sen. Swandal moved that **SB 20 DO PASS**. Motion carried unanimously by roll call vote.

EXECUTIVE ACTION ON SB 21

02:22:17 **Motion/Vote:** Sen. Fielder moved that **SB 21 DO PASS**. Motion carried unanimously by roll call vote.

02:23:18 Chairman Regier

ADJOURNMENT

Adjournment: 10:24 A.M.

Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT(jus05aad.pdf)

SENATE JUDICIARY
Exhibit No. 8
Date 1/6/17
Bill No. SB 29

Law and Justice Interim Committee Proposed Legislation for 2017 Legislature

Bill #	LJIC#	Short Title	Description	Sponsor
SB 29	lj01	Revising laws regarding sexual crimes	Revises the definition of "consent" so that proof of force is no longer required; instead, "consent" is defined in a positive fashion requiring "words or overt actions indicating freely given agreement". The revised definition is similar to the Uniform Code of Military Justice and the definition of "consent" used in Wisconsin. Creates a new crime of aggravated sexual intercourse without consent, which requires proof of force and has more significant penalties.	Senator Diane Sands
SB 26	lj03	Revising laws regarding sexual intercourse without consent	Provides a maximum penalty of 5 years in prison for sexual intercourse without consent when: (1) an offender is 18 years of age or younger and the victim is 14 years of age or older, (2) the offense is a first offense, and (3) no force was used. Provides that an 18-year-old who is convicted of sexual intercourse without consent involving a victim who is age 14 or older does not have to register as a sex offender as long as force was not used.	Senator Sue Malek
HB 129	lj02b	Revising laws related to privacy in communications	Creates a new subsection under the crime of privacy in communications for distributing a visual or print medium of a person who is identifiable, engaged in sexual conduct, and who has not consented to the creation of the visual or print medium. The maximum fine for a second offense was also raised from $1,000 to $5,000.	Representative Ellie Hill
SB 30	lj04	Revising laws related to criminal statutes of limitations	Extends the statute of limitations for sex crimes with victims who are under the age of 18 years to 20 years after the victim reaches the age of 18.	Senator Diane Sands
SB 17	lj05	Revising laws related to juvenile offenders and registration as a sex offender	Revises the Youth Court Act so that sexual offenders who are juveniles when convicted do not have to register as sex offenders unless the court finds that registration is necessary to protect the public.	Senator Nels Swandal
SB 22	lj06	Revise sexual assault and parental rights laws	Allows for termination of the parent-child legal relationship by court order if the parent was convicted or if the court finds by clear and convincing evidence that the parent committed an act of sexual assault, rape, or incest and the child was born as a result of that act. Creates a process by which the victim of the act can file a petition with the court to terminate the parental rights of the other parent.	Senator Sue Malek
Not introduced		Revise incest laws (LC 303)	Revises the crime of incest to provide that consent is not a defense under this section if the victim is less than 18 years old.	Representative Jenny Eck

Last updated 12/15/2016

SENATE JUDICIARY
Exhibit No. 6
Date: 1/6/17
Bill No. SB 29

MISSOULA COUNTY

RELATIONSHIP VIOLENCE SERVICES

317 Woody Street
Mailing Address: 200 West Broadway
Missoula MT 59802-4292 | (406) 258-3830 | www.co.missoula.mt.us/RVS

MISSOULA

Crime Victim Advocate Program | JUST Response | Healthy Relationships Project

December 30, 2016

To: Senate Judiciary Committee
From: Missoula Relationship Violence Services of the Department of Grants and Community Programs
Re: SB 29 – Revising laws regarding sexual crimes

Missoula City-County Relationship Violence Services appreciates the opportunity to submit written testimony in support of SB 29.

Relationship Violence Services —established in 1985 as the Crime Victim Advocate Program —is one of the oldest legal advocacy programs in Montana. Our program provides free and confidential assistance to victims of relationship violence, sexual assault, stalking, and other violent crimes. Our program offers victim advocacy, crisis counseling, and support; provides information and referrals to community-based services; and, upholds victims' rights within the criminal justice system. We strongly support SB 29 sponsored by Senator Sands.

The proposed revision to the laws regarding sex crimes and sexual intercourse without consent has been created after extensive study. We applaud the committee's efforts and commitments to study these complex issues and propose legislation that will improve outcomes for victims of these crimes and hold offenders accountable. Among other proposed changes, we are confident that revising the definition of consent will have a lasting and positive effect on the prosecution of sex crimes in Montana.

Sexual offenders create untold trauma in the lives of their victims. Rape is one of the most violent and damaging of crimes a person can experience. The intervention of law enforcement and the criminal justice system can play a critical role in the recovery of victims... or can cause new trauma, defending on the effectiveness of the response. Our statutes and responses should protect the innocent and hold the perpetrators accountable. The proposed changes in SB 29 will go a long way in creating this positive change.

Thank you for your time and attention to this important issue. I strongly urge you to vote **YES on SB 29**. I am available to provide further information if you have any questions.

Sincerely,

Shantelle Gaynor
Department Manager
Relationship Violence Services
(406) 258-4650 | sgaynor@missoulacounty.us

MISSOULA CITY-COUNTY
RELATIONSHIP VIOLENCE SERVICES

Ending relationship violence. Creating solutions for a healthy community.

SENATE JUDICIARY
Exhibit No. 7
Date: 1/6/17
Bill No. SB29

January 5th, 2017

To: Senate Judiciary Committee, Montana Legislature
From: Drew Colling, LCPC
Re: SB 29: Revising Laws Related to Sexual Crimes (Sponsor: Sands, Missoula).

Good morning, Mr. Chairman and Members of the Senate Judiciary Committee. For the record, my name is Drew Colling and I am a Licensed Clinical Professional Counselor.

I write to provide support for SB 29.

In recent years the neurobiology of trauma has been an important focus of research. Rebecca Campbell, Ph.D., has reviewed this scientific literature and in particular the effects of trauma on the brain during sexual assault. Her findings clarify our understanding of the ways in which a victim may experience sexual assault and provide answers to important questions people have about victim responses to traumatic events.

According to Campbell, the three primary responses to a traumatic situation are freeze, flight or fight. The state of being frozen has been an issue in sexual assault, because deeply enculturated rape myths insist the only 'correct' response is to fight or flee. Yet again and again, victims have reported feeling frozen. We now know that the state of being frozen during a traumatic event is called "tonic immobility" (Campbell 2012). As further and more local evidence, the UM Safe Campus Survey 2016 (Fiore, C., & Pepper, A. *2016)* found that 83.3% of respondents who reported experiencing sexual assault also reported a freeze response to the event. As a basic mammalian response hard-wired for our survival, it is uncontrollable, and typified by an inability to physically move the body or speak. This freeze response is well represented in the scientific literature, reported again and again by victims of sexual assault, and commonly experienced.

Another important issue addressed by Campbell's analysis and summation of the research literature addresses the 'lack of emotion' of victims following an assault. This response can seem counterintuitive to both the victim and other people. However, during a sexual assault opiates are released in very high levels in order to block physical and emotional pain. These strong opiates are "not sensitive to subtleties" (Campbell 2012) and can dramatically flatten affect causing the victim to appear distanced from the event, unemotional, or uninvolved. This flattened affect is one way a victim can experience trauma and should not be used as an argument that the person was not unduly distressed. This is another endemic rape myth that negatively affects victims in their recovery and in the prosecution of the crime committed against them.

Moreover, Campbell's review of the literature also found that when victims experience coercive sexual assault, the capacity for rational thought is diminished. Problem-solving and other thought-processes are likely not accessible to a victim during trauma. Every one of us has experienced significant stress at one time or another in our lives and can relate to how difficult it is to use rational thought to process through the experience. Sexual assault is experienced as life threatening by victims and rational thought is suppressed in order to respond instantly for survival. Again, the rape myth that the victim didn't rationally and logically try to stop the

assault has been successfully and wrongfully used as evidence for the defense in many legal actions.

In summary, there are harmful rape myths that are firmly entrenched in our culture and evidenced in our legal system. The science of the neurobiology of trauma directly refutes these myths. Again, the myths suggest:

1. That a freeze response equals consent (the person did not fight typically someone larger and stronger and did not try to flee typically someone faster and stronger and therefore 'participated' in the rape.
2. That a lack of affect during and after the assault means that the person was once again 'participating' because they did not seem 'sufficiently emotional' or 'involved' afterward.
3. That a lack of rational logical thought related to figuring out how to escape the situation if they didn't want to participate is evidence that they, indeed, chose to participate in the rape.

The science we have on the neurobiology of trauma disputes these rape myths and should put the issue to rest. Unfortunately, our laws do not yet reflect the science and re-victimization through our legal system continues pervasively and systemically.

Finally, I would like to speak from my experience as a therapist who has worked with many victims of sexual assault over the years. One of the greatest challenges to reducing the shockingly high incidence of sexual assault is the fact that many are afraid of the reporting process. The rape myths described above (and others) are so deeply enculturated that victims are afraid they will not be believed and that they will be blamed for the assault or that they somehow 'deserved' it (i.e., 'if I hadn't been drinking,' or 'I shouldn't have been walking alone' or 'I should have worn different clothing') rather than putting the blame squarely where it belongs—on the one who perpetrated the crime. No one 'deserves' to be sexually assaulted or 'asks' for a violent act to be committed against them, period. The law should reflect the right of basic safety and self-determination for every adult. The way the law is currently written causes clients to believe (and this belief is supported through the appalling lack of convictions) that receiving justice through the court process impossible. Our wide-spread societal belief in the rape myths and the constant presence of these myths as evidence used against victims in our legal system deters victims from even reaching out for help let alone reporting to law enforcement. This creates a system that favors perpetrators, deeply harms victims, and supports a rape culture that flourishes unchecked.

Over the past four year Missoula has worked tirelessly to improve our collective response to victims of sexual assault. Law enforcement, medical providers, advocates and attorneys have come together to improve the system to make it fair rather than stacked against victims as much as we can. It is now up to our lawmakers to reflect the scientific reality of sexual assault in the law. I have no doubt that the proposed changes will assist us to do what we believe our justice system is there to do—that is, protect victims and hold offenders accountable. The power of the law can be used to destroy rape culture and make our communities safe from the ravages of sexual assault.

I urge you to pass SB 29. Thank you for your time and attention.

Fiore, C., & Pepper, A. *UM Safe Campus SURVEY, 2016.*

Campbell, R. (2012, December 3). *The Neurobiology of Sexual Assault.* In *National Institute of Justice.* Retrieved January 5, 2017, from https://www.nij.gov/multimedia/presenter/presenter-campbell/pages/presenter-campbell-transcript.aspx

BUSINESS REPORT

MONTANA SENATE
65th LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Friday, January 6, 2017 **Time:** 8:00 A.M.
Place: Capitol **Room:** 303

BILLS and RESOLUTIONS HEARD:

SB 22 - Revise laws re termination of parental rights when child is result of rape - Sen. Sue Malek
SB 29 - Revising laws regarding sexual crimes - Sen. Diane Sands
SB 30 - Revise laws related to criminal statute of limitations - Sen. Diane Sands

EXECUTIVE ACTION TAKEN:

SB 20-Do Pass
SB 21-Do Pass

Comments:

SEN. Keith Regier, Chair

MONTANA STATE SENATE

2017 JUDICIARY COMMITTEE

ROLL CALL

DATE: 1/6/17

NAME	PRESENT	ABSENT/ EXCUSED
CHAIRMAN, SENATOR KEITH REGIER	✓	
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	✓	
VICE CHAIRMAN, SENATOR DIANE SANDS	✓	
SENATOR STEVE HINEBAUCH	✓	
SENATOR JEDEDIAH HINKLE	✓	
SENATOR CHAS VINCENT	✓	
SENATOR NELS SWANDAL	✓	
SENATOR MARY SHEEHY MOE	✓	
SENATOR MARGARET MacDONALD	✓	
SENATOR JEN GROSS	✓	
PRESIDENT SCOTT SALES	✓	

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 20** (first reading copy -- white) **do pass**.

Signed: _____
Senator Keith Regier, Chair

- END -

Committee Vote:
Yes 11, No 0
Fiscal Note Required __

SB0020001SC.sjc

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 21** (first reading copy -- white) **do pass**.

Signed: Keith Regier
Senator Keith Regier, Chair

- END -

Committee Vote:
Yes 11, No 0
Fiscal Note Required __

SB0021001SC.sjc

MONTANA STATE SENATE
ROLL CALL VOTE
2017 JUDICIARY COMMITTEE

DATE 1/6/17 BILL NO SB 20 MOTION NO. 1

MOTION: DO PASS

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR DIANE SANDS	—		
SENATOR JEDEDIAH HINKLE	—		
SENATOR MARY SHEEHY MOE	—		
SENATOR NELS SWANDAL	—		
SENATOR MARGARET MacDONALD	—		
SENATOR JEN GROSS	—		
PRESIDENT SCOTT SALES	—		
SENATOR STEVE HINEBAUCH	—		
CHAIRMAN, SENATOR KEITH REGIER	—		

11 | 0

MONTANA STATE SENATE
ROLL CALL VOTE
2017 JUDICIARY COMMITTEE

DATE 1/6/17 **BILL NO** SB21 **MOTION NO.** 1

MOTION: DO PASS

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR DIANE SANDS	—		
SENATOR JEDEDIAH HINKLE	—		
SENATOR MARY SHEEHY MOE	—		
SENATOR NELS SWANDAL	—		
SENATOR MARGARET MacDONALD	—		
SENATOR JEN GROSS	—		
PRESIDENT SCOTT SALES	—		
SENATOR STEVE HINEBAUCH	—		
CHAIRMAN, SENATOR KEITH REGIER	—		

11/0

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, January 6, 2017
SB 22 - Revise laws re termination of parental rights when child is result of rape
Sponsor: **Sen. Sue Malek**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Robin Turner	MCADSV	✓		
Ole Olson	MT DOT	✓		
~~[illegible]~~				
Tracy Vaughn	MSOTA	✓		
Caitlin Borgmann	ACLU	✓		
Ashley Makowski	self	✓		
Deb Matteucci	MBCC	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, January 6, 2017
SB 29 - Revising laws regarding sexual crimes
Sponsor: **Sen. Diane Sands**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Lt Col Beverly Schneider	Dept of Military Affairs			BYS
Jennifer Clark	self - prosecutor	X		
Robin Turner	member	✓		
Abigail Bilcher	MSUM	X		
Ole Olson	MT DOJ	✓		
Shi Russi	ACLU	X		
Tracy Vaughn	MSOTA	X		
Mark Murphy	MCAS	X		
Christina Powell	Sexual Assault Counselor/Educator	X		
Caitlin Borgmann	ACLU	X		
Ashley Makowski	self	X		
Beth Brenneman	Disability Rights MT	X		
Deb Matteucci	MBCC	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, January 6, 2017
SB 30 - Revise laws related to criminal statute of limitations
Sponsor: **Sen. Diane Sands**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Robin Turner	MCADSV	✓		
Ole Olson	MT DOJ	✓		
Tracy Vaughn	MSOTA	✓		
[illegible]				
[illegible]				
Ashley Makowske	self	✓		
MARK MURPHY	M			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on January 13, 2017 at 10:00 A.M., in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Keith Regier, Chair (R)
Sen. Jennifer Fielder, Vice Chair (R)
Sen. Jen Gross (D)
Sen. Steve Hinebauch (R)
Sen. Jedediah Hinkle (R)
Sen. Margaret (Margie) MacDonald (D)
Sen. Mary Moe (D)
Sen. Scott Sales (R)
Sen. Diane Sands (D)
Sen. Nels Swandal (R)
Sen. Chas Vincent (R)

Members Excused: None

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 92, 1/9/2017
Executive Action:	SB 22-Do Pass As Amended, SB 26-Do Pass As Amended SB 29-Do Pass As Amended, SB 9-Tabled

Committee Business:

00:00:34 Chairman Regier

00:01:21 Julianne Burkhardt, Legislative Services Division (LSD)
EXHIBIT(jus10a01)

00:01:50 Chairman Regier
00:02:03 Sen. MacDonald

HEARING ON SB 92

Opening Statement by Sponsor:

00:03:38 Sen. Albert Olszewski (R), SD 6, opened the hearing on SB 92, Allow for proxy decision-making in medical care.

Proponents' Testimony:

00:04:03 Mike Foster, Sisters of Charity Leavenworth Health Systems, Inc. (SCLHS)
00:10:25 Ellen Clifton, registered nurse, St. Vincent's Healthcare, member, St. Vincent's Healthcare Medical Ethics Committee, Billings
00:15:19 Matt Brower, executive director, Montana Catholic Conference
00:16:57 Jean Branscum, chief executive officer, Montana Medical Association
00:18:52 Casey Blumenthal, Montana Hospital Association
00:19:59 Aimee Grmoljez, Billings Clinic

Opponents' Testimony:

00:21:03 Beth Brenneman, Disability Rights Montana (DRM)
00:24:00 Al Smith, Montana Trial Lawyers Association (MTLA)

Informational Testimony:

None

Questions from Committee Members and Responses:

00:28:40 Sen. Sands
00:29:43 Sen. Olszewski
00:32:50 Ms. Clifton, RN
00:34:17 Sen. Vincent
00:34:42 Mr. Foster, SCLHS
00:35:09 Sen. Vincent
00:36:27 Sen. Olszewski
00:40:34 Chairman Regier
00:40:41 Sen. Olszewski
00:41:34 Chairman Regier
00:41:41 Mr. Foster
00:42:01 Ms. Clifton

00:43:49 Sen. Moe
00:44:35 Ms. Clifton
00:46:31 Sen. Moe
00:47:01 Ms. Brenneman, DRM
00:48:32 Sen. Moe
00:48:49 Mr. Smith, MTLA
00:50:47 Sen. Fielder
00:51:19 Mr. Smith
00:54:17 Sen. Fielder
00:54:59 Sen. Olszewski
00:57:43 Sen. Gross
00:58:12 Ms. Brenneman
00:58:39 Chairman Regier
00:59:08 Mr. Foster
01:00:21 Sen. Vincent
01:00:33 Mr. Foster

Closing by Sponsor:

01:01:40 Sen. Olszewski

EXECUTIVE ACTION ON SB 22

01:08:17 **Motion:** Sen. Fielder moved that **SB 22 DO PASS**.

01:09:05 **Motion:** Sen. K. Regier moved that **SB 22 BE AMENDED**.
EXHIBIT(jus10a02)

Discussion:

01:10:20 Sen. Sands
01:10:31 Chairman Regier
01:11:12 Sen. Swandal
01:11:54 Sen. Sands
01:12:11 Sen. Swandal
01:13:13 Sen. Sands
01:13:31 Chairman Regier

01:14:16 **Vote:** Motion carried unanimously by roll call vote.

01:14:21 **Motion:** Sen. Fielder moved that **SB 22 DO PASS AS AMENDED**.

01:14:30 **Motion:** Sen. Moe moved that **SB 22 BE AMENDED**.
EXHIBIT(jus10a03)

Discussion:

01:15:46 Sen. Vincent
01:16:40 Sen. Swandal

01:17:29 **Vote:** Motion carried unanimously by roll call vote.

01:18:00 **Motion/Vote:** Sen. Fielder moved that **SB 22 DO PASS AS AMENDED**. Motion carried unanimously by roll call vote.

EXECUTIVE ACTION ON SB 26

01:21:29 **Motion:** Sen. Fielder moved that **SB 26 DO PASS**.

01:21:44 **Motion:** Sen. K. Regier moved that **SB 26 BE AMENDED**.
EXHIBIT(jus10a04)

Discussion:

01:22:14 Ms. Burkhardt, Legislative Services Division (LSD)

01:22:41 **Vote:** Motion carried unanimously by voice vote.

01:22:53 **Motion:** Sen. Fielder moved that **SB 26 DO PASS AS AMENDED**.

01:23:03 **Motion:** Sen. Fielder moved that **SB 26 BE AMENDED**.
EXHIBIT(jus10a05)

Discussion:

01:23:52 Sen. Sands
01:24:03 Sen. Swandal
01:25:25 Ms. Burkhardt, LSD
01:25:38 Sen. Moe
01:25:51 Sen. Hinkle

01:26:16 **Vote:** Motion carried unanimously by voice vote.

01:26:31 Sen. Fielder

01:26:39 **Motion:** Sen. Hinkle moved that **SB 26 BE AMENDED**.
EXHIBIT(jus10a06)

Discussion:

01:29:11 Sen. MacDonald
01:31:16 Sen. Sands
01:32:00 Sen. Swandal
01:34:37 Sen. Moe
01:35:17 Sen. Hinkle
01:35:48 Sen. Moe
01:37:13 Sen. Swandal
01:37:22 Chairman Regier

01:37:39 **Vote:** Motion failed 4-7 by roll call vote with Sen. Fielder, Sen. Hinebauch, Sen. Hinkle and Sen. K. Regier voting aye.

01:38:27 **Motion/Vote:** Sen. Fielder moved that **SB 26 DO PASS AS AMENDED**. Motion carried 8-3 by roll call vote with Sen. Hinebauch, Sen. Hinkle and Sen. K. Regier voting no.

EXECUTIVE ACTION ON SB 29

01:41:10 **Motion:** Sen. Sands moved that **SB 29 DO PASS**.

01:41:59 **Motion/Vote:** Sen. Sands moved that **SB 29 BE AMENDED**. Motion carried unanimously by voice vote.
EXHIBIT(jus10a07)

01:43:09 **Motion:** Sen. Sands moved that **SB 29 DO PASS AS AMENDED**.

01:43:20 **Motion:** Sen. Fielder moved that **SB 29 BE AMENDED**.
EXHIBIT(jus10a08)

Discussion:

01:44:01 Ms. Burkhardt
01:45:07 Sen. Fielder
01:46:24 Sen. Sands
01:46:48 Sen. MacDonald
01:47:05 Sen. Moe

01:48:01 **Vote:** Motion carried unanimously by voice vote.

01:48:13 **Motion/Vote:** Sen. Sands moved that **SB 29 DO PASS AS AMENDED**. Motion carried unanimously by roll vote.

EXECUTIVE ACTION ON SB 90

01:49:03 **Motion:** Sen. Swandal moved that **SB 90 DO PASS**.

Discussion:

01:50:03 Sen. Sales

01:50:21 Without objection, Sen. Swandal withdrew the DO PASS motion.

EXECUTIVE ACTION ON SB 9

01:50:32 Sen. Sales

01:51:04 **Motion:** Sen. Sands moved that **SB 9 DO PASS**.

Discussion:

01:51:37 Sen. Moe
01:52:22 Sen. Fielder
01:54:01 Sen. MacDonald
01:55:31 Sen. Sands
01:56:18 Sen. Gross
01:57:00 Chairman Regier

01:58:17 **Vote:** Motion failed 4-7 by roll call vote with Sen. Gross, Sen. MacDonald, Sen. Moe and Sen. Sands voting aye.

01:58:29 **Motion/Vote:** Sen. Sands moved that **SB 9 BE TABLED AND THE VOTE REVERSED**. Motion carried without objection.

01:58:44 Chairman Regier
01:59:31 Sen. Sands

ADJOURNMENT

Adjournment: 12:06 P.M.

_____
Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT(jus10aad.pdf)

SENATE JUDICIARY
Exhibit No. 7
Date: 1/13/17
Bill No. SB29

Amendments to Senate Bill No. 29
1st Reading Copy

Requested by Senator Diane Sands

For the Senate Judiciary Committee

Prepared by Julianne Burkhardt
January 10, 2017 (1:30pm)

1. Title, page 1, line 9.
Strike: "AND"

2. Page 1, line 10.
Following: "46-18-222,"
Insert: "AND 46-23-502"

3. Page 16, line 25.
Following: line 25
Insert: "Section 7. Section 46-23-502, MCA, is amended to read:

"46-23-502 Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), [section 1], 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal

government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a).""

- END -

SENATE JUDICIARY
Exhibit No. 8
Date: 1/13/17
Bill No. SB29

Amendments to Senate Bill No. 29
1st Reading Copy

Requested by Senator Jennifer Fielder

For the Senate Judiciary Committee

Prepared by Julianne Burkhardt
January 9, 2017 (8:00am)

1. Title, page 1, line 7 through line 8.
Following: ""CONSENT";"
Strike: remainder of line 7 through "CRIMES;" on line 8

2. Page 1, line 21 through page 11, line 2.
Strike: section 2 in its entirety
Renumber: subsequent sections

3. Page 13, line 22 through line 23.
Following: "committing"
Strike: remainder of line 22 through "consent" on line 23
Insert: "a violation of this section"

- END -

Montana State Legislature

2017 SESSION

ADDITIONAL DOCUMENTS
May include the following:

Business Page
[Signed by Chairman]
Roll Call
Standing Committee Reports
Tabled Bills
Fiscal Reports
Rolls Call Votes
Proxy Forms
Visitor Registrations

***Any other documents, which were submitted after the committee hearing has ended and/or was submitted late [within 48 hours], regarding information in the committee hearing.**
***Witness Statements that were not presented as exhibits.**

Montana Historical Society Archives
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2017 Legislative
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BUSINESS REPORT

MONTANA SENATE
65th LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Friday, January 13, 2017
Place: Capitol

Time: 10:00 A.M.
Room: 303

BILLS and RESOLUTIONS HEARD:

SB 92 - Allow for proxy decision-making in medical care - Sen. Albert Olszewski

EXECUTIVE ACTION TAKEN:

SB 22-Do Pass As Amended
SB 26-Do Pass As Amended
SB 29-Do Pass As Amended
SB 9-Tabled

Comments:

Keith Regier

SEN. Keith Regier, Chair

MONTANA STATE SENATE

2017 JUDICIARY COMMITTEE

ROLL CALL

DATE: 1/13/17

NAME	PRESENT	ABSENT/ EXCUSED
CHAIRMAN, SENATOR KEITH REGIER		
VICE CHAIRMAN, SENATOR JENNIFER FIELDER		
VICE CHAIRMAN, SENATOR DIANE SANDS		
SENATOR STEVE HINEBAUCH		
SENATOR JEDEDIAH HINKLE		
SENATOR CHAS VINCENT		
SENATOR NELS SWANDAL		
SENATOR MARY SHEEHY MOE		
SENATOR MARGARET MacDONALD		
SENATOR JEN GROSS		
PRESIDENT SCOTT SALES		

SENATE STANDING COMMITTEE REPORT

January 13, 2017

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 22** (first reading copy -- white) **do pass as amended**.

Signed: _____
Senator Keith Regier, Chair

And, that such amendments read:

1. Title, page 1, line 8.
Following: "RELATIONSHIP;"
Insert: "PROVIDING THAT THE OBLIGATION TO PAY CHILD SUPPORT IS NOT RELIEVED BY THE TERMINATION OF PARENTAL RIGHTS;"

2. Page 1, line 21.
Following: "incest"
Strike: ", as" through "part 5,"

3. Page 2, line 2.
Following: "except"
Insert: ": (i) "

4. Page 2, line 2.
Following: "parent"
Insert: "; and
(ii) that nothing in this section may be construed to relieve the parent whose rights are terminated as provided in [sections 1 through 3] of any child support obligations as provided in Title 40, chapters 4 and 5"

- END -

Committee Vote:
Yes 11, No 0
Fiscal Note Required __

SB0022002SC.sjc

SENATE STANDING COMMITTEE REPORT

January 13, 2017

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 26** (first reading copy -- white) **do pass as amended**.

Signed: _____
Senator Keith Regier, Chair

And, that such amendments read:

1. Page 2, line 10 through line 11.
Following: "offender"
Strike: "in the course of committing sexual intercourse without consent"

2. Page 5, line 18.
Strike: "46-5-503(1), (3), or (4)"
Insert: "45-5-503(1), (3), or (4)"

- END -

Committee Vote:
Yes 8, No 3
Fiscal Note Required X

SB0026001SC.sjc

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 29** (first reading copy -- white) **do pass as amended**.

Signed: _____
Senator Keith Regier, Chair

And, that such amendments read:

1. Title, page 1, line 7 through line 8.
Following: ""CONSENT";"
Strike: remainder of line 7 through "CRIMES;" on line 8

2. Title, page 1, line 9.
Strike: "AND"

3. Page 1, line 10.
Following: "46-18-222,"
Insert: "AND 46-23-502"

4. Page 1, line 21 through page 11, line 2.
Strike: section 2 in its entirety
Renumber: subsequent sections

5. Page 13, line 22 through line 23.
Following: "committing"
Strike: remainder of line 22 through "consent" on line 23
Insert: "a violation of this section"

6. Page 16, line 25.
Following: line 25
Insert: "Section 6. Section 46-23-502, MCA, is amended to read:
"46-23-502 Definitions. As used in 46-18-255 and this part,

Committee Vote:
Yes 11, No 0
Fiscal Note Required X

SB0029001SC.sjc

the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the

victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), [section 1], 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a).""

- END -

COMMITTEE FILE COPY

BILL TABLED NOTICE

SENATE JUDICIARY COMMITTEE

The **SENATE JUDICIARY COMMITTEE** TABLED

SB 9 - Provide for primary enforcement of seatbelt laws - Sen. Dick Barrett

by motion, on **Friday, January 13, 2017** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

(For the Committee)

(For the Secretary of the Senate)

1:00 / 1/13
(Time) (Date)

January 13, 2017 (12:08pm) Pam Schindler, Secretary Phone: 444-4618

MONTANA STATE SENATE
ROLL CALL VOTE
2017 JUDICIARY COMMITTEE

DATE 1/13/17 BILL NO SB 22 MOTION NO. 2

MOTION: S B 22 amend

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	✓		
SENATOR CHAS VINCENT	✓		
SENATOR DIANE SANDS	✓		
SENATOR JEDEDIAH HINKLE	✓		
SENATOR MARY SHEEHY MOE	✓		
SENATOR NELS SWANDAL	✓		
SENATOR MARGARET MacDONALD	✓		
SENATOR JEN GROSS	✓		
PRESIDENT SCOTT SALES	✓		
SENATOR STEVE HINEBAUCH	✓		
CHAIRMAN, SENATOR KEITH REGIER	✓		

11 | 0

MONTANA STATE SENATE
ROLL CALL VOTE
2017 JUDICIARY COMMITTEE

DATE 1/13/17 **BILL NO** SB22 **MOTION NO.** 3

MOTION: amendment SB002201.ajs

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR DIANE SANDS	—		
SENATOR JEDEDIAH HINKLE	—		
SENATOR MARY SHEEHY MOE	—		
SENATOR NELS SWANDAL	—		
SENATOR MARGARET MacDONALD	—		
SENATOR JEN GROSS	—		
PRESIDENT SCOTT SALES	—		
SENATOR STEVE HINEBAUCH	—		
CHAIRMAN, SENATOR KEITH REGIER	—		

11 | 0

MONTANA STATE SENATE
ROLL CALL VOTE
2017 JUDICIARY COMMITTEE

DATE 1/13/17 **BILL NO** SB22 **MOTION NO.** 4

MOTION: DO PASS AS AMENDED

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR DIANE SANDS	—		
SENATOR JEDEDIAH HINKLE	—		
SENATOR MARY SHEEHY MOE	—		
SENATOR NELS SWANDAL	—		
SENATOR MARGARET MacDONALD	—		
SENATOR JEN GROSS	—		
PRESIDENT SCOTT SALES	—		
SENATOR STEVE HINEBAUCH	—		
CHAIRMAN, SENATOR KEITH REGIER	—		

11/0

MONTANA STATE SENATE
ROLL CALL VOTE
2017 JUDICIARY COMMITTEE

DATE 1/13/17 **BILL NO** SB26 **MOTION NO.** _____

MOTION: amendment ~~26.02~~ 26.03

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT		—	
SENATOR DIANE SANDS		—	
SENATOR JEDEDIAH HINKLE	—		
SENATOR MARY SHEEHY MOE		—	
SENATOR NELS SWANDAL		—	
SENATOR MARGARET MacDONALD		—	
SENATOR JEN GROSS		—	
PRESIDENT SCOTT SALES		—	
SENATOR STEVE HINEBAUCH	—		
CHAIRMAN, SENATOR KEITH REGIER	—		

4/7

MONTANA STATE SENATE

ROLL CALL VOTE

2017 JUDICIARY COMMITTEE

DATE 1/13/17 **BILL NO** SB26 **MOTION NO.** _____

MOTION: DO PASS AS AMENDED

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR DIANE SANDS	—		
SENATOR JEDEDIAH HINKLE		—	
SENATOR MARY SHEEHY MOE	—		
SENATOR NELS SWANDAL	—		
SENATOR MARGARET MacDONALD	—		
SENATOR JEN GROSS	—		
PRESIDENT SCOTT SALES	—		
SENATOR STEVE HINEBAUCH		—	
CHAIRMAN, SENATOR KEITH REGIER		—	

8/3

MONTANA STATE SENATE

ROLL CALL VOTE

2017 JUDICIARY COMMITTEE

DATE 1/13/17 **BILL NO** SB29 **MOTION NO.** _____

MOTION: Do Pass As Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		
SENATOR DIANE SANDS	—		
SENATOR JEDEDIAH HINKLE	—		
SENATOR MARY SHEEHY MOE	—		
SENATOR NELS SWANDAL	—		
SENATOR MARGARET MacDONALD	—		
SENATOR JEN GROSS	—		
PRESIDENT SCOTT SALES	—		
SENATOR STEVE HINEBAUCH	—		
CHAIRMAN, SENATOR KEITH REGIER	—		

11/0

MONTANA STATE SENATE
ROLL CALL VOTE
2017 JUDICIARY COMMITTEE

DATE 1/13/17 **BILL NO** SB 9 **MOTION NO.** 1

MOTION: Do Pass

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR JENNIFER FIELDER		—	
SENATOR CHAS VINCENT		—	
SENATOR DIANE SANDS	—		
SENATOR JEDEDIAH HINKLE		—	
SENATOR MARY SHEEHY MOE	—		
SENATOR NELS SWANDAL		—	
SENATOR MARGARET MacDONALD	—		
SENATOR JEN GROSS	—		
PRESIDENT SCOTT SALES		—	
SENATOR STEVE HINEBAUCH		—	
CHAIRMAN, SENATOR KEITH REGIER		—	

4/7

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, January 13, 2017
SB 92 - Allow for proxy decision-making in medical care
Sponsor: **Sen. Albert Olszewski**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Mike Foster	Catholic Hospitals	✓		
Ellen Clifton	St Vincent Healthcare	✓		
Jean Branscum	MT Med Assn	✓		
Matthew Brower	Montana Catholic Conference	✓		
Aimee Grmoljez	Billings Chmbr	✓		
Al Smith	MTLA		X	
Beth Brenneman	DRM		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Alan Doane, on March 24, 2017 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Alan Doane, Chair (R)
Rep. Virginia Court, Vice Chair (D)
Rep. Laurie Bishop (D)
Rep. Bob Brown (R)
Rep. Kathy Kelker (D)
Rep. Casey Knudsen (R)
Rep. Nate McConnell (D)
Rep. Shane A. Morigeau (D)
Rep. Dale Mortensen (R)
Rep. Zac Perry (D)
Rep. Barry Usher (R)
Rep. Kirk Wagoner (R)

Members Excused:

Rep. Seth Berglee, Vice Chair (R)
Rep. Jennifer Eck (D)
Rep. Bill Harris (R)
Rep. Ellie Hill Smith (D)
Rep. Theresa Manzella (R)
Rep. Matt Regier (R)
Rep. Lola Sheldon-Galloway (R)

Members Absent: None

Staff Present: Sara Fleming, Committee Secretary
Helen Thigpen, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 17, 3/9/2017; SB 26, 3/9/2017; SB 29, 3/9/2017; SB 30, 3/9/2017
Executive Action:	SB 17, SB 45, SB 118, SB 167, HB 477

HEARING ON SB 17

Opening Statement by Sponsor:
00:01:28 Sen. Nels Swandal (R), SD 30, opened the hearing on SB 17, Revise laws related to juvenile offenders and registration as sex offender.

Proponents' Testimony:
00:01:43 Rep. Regier and Rep. Hill Smith joined the meeting.
00:03:48 Sen. Sands
00:04:13 Rep. Sheldon-Galloway joined the meeting.
00:04:36 SK Rossi, American Civil Liberties Union (ACLU)
00:04:52 Rep. Morigeau left the meeting.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:
00:05:10 Sen. Swandal

HEARING ON SB 29

Opening Statement by Sponsor:
00:06:01 Sen. Diane Sands (D), SD 49, opened the hearing on SB 29, Revising laws regarding sexual crimes.
EXHIBIT(juh61a01)
EXHIBIT(juh61a02)

00:06:09 Rep. Harris joined the meeting

Proponents' Testimony:
00:15:07 Attorney General Tim Fox
00:21:11 Jennifer Clark, Self
00:33:23 Susie Boylan, Self
00:41:52 Alana Sherstad, Self
00:42:19 Rep. Eck and Rep. Berglee joined the meeting
00:42:28 Rep. Wagoner left the meeting.
00:45:56 Abigail Belcher, Associated Students of the University of Montana (ASUM)
00:47:12 Mark Murphy, Montana County Attorneys Association (MCAA)
00:47:53 Melissa Broch, Self
00:48:24 Robin Turner, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
EXHIBIT(juh61a03)

Opponents' Testimony: None

Informational Testimony:
00:52:42 Beverly Schneider, Montana National Guard

Questions from Committee Members and Responses:
00:54:20 Rep. C. Knudsen
00:54:43 Jennifer Clark, Self
00:56:51 Rep. Kelker
00:57:28 Robin Turner, MCADSV
00:58:50 Rep. Kelker
00:59:17 Alana Sherstad, Self
01:00:56 Rep. McConnell
01:01:44 Jennifer Clark, Self

Closing by Sponsor:
01:04:37 Sen. Sands

01:08:04 Recess
01:15:19 Reconvene

HEARING ON SB 30

Opening Statement by Sponsor:
01:15:40 Sen. Diane Sands (D), SD 49, opened the hearing on SB 30, Revise laws related to criminal statute of limitations.

Proponents' Testimony:
01:20:27 Mary Cochnaur, Department of Justice (DOJ)
01:23:06 Alana Sherstad, Self
01:25:11 Robin Turner, Montana Coalition Against Domestic and Sexual Violence (MCADVS)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:
01:26:52 Sen. Sands

HEARING ON SB 26

Opening Statement by Sponsor:
01:31:22 Sen. Sue Malek (D), SD 46, opened the hearing on SB 26, Revise laws regarding sexual intercourse without consent.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
01:35:15 Rep. Bishop
01:35:48 Sen. Malek
01:35:58 Rep. Usher
01:36:16 Alana Sherstad, Self
01:38:32 Rep. B. Brown
01:38:59 Sen. Malek
01:39:09 Rep. Court
01:39:48 Sen. Malek

Closing by Sponsor:
01:40:45 Sen. Malek

01:51:36 Recess
02:31:27 Reconvene

EXECUTIVE ACTION ON SB 17

02:31:39 **Motion/Vote:** Rep. Berglee moved that **SB 17 BE CONCURRED IN**. Motion carried 15-4 by roll call vote with Rep. Manzella, Rep. M. Regier, Rep. Sheldon-Galloway and Rep. Usher voting no. Rep. Manzella and Rep. M. Regier voted by proxy. Rep. Bishop will carry the bill.

EXECUTIVE ACTION ON SB 45

Discussion:
02:33:46 Helen Thigpen, Legislative Services Division (LSD)

02:34:10 **Motion:** Rep. Berglee moved that **SB 45 BE CONCURRED IN**.

Discussion:
02:34:19 Rep. C. Knudsen
02:34:38 Helen Thigpen, LSD
02:34:51 Rep. B. Brown
02:35:53 Rep. Mortensen

02:36:36 **Vote:** Motion carried 16-3 by roll call vote with Rep. B. Brown, Rep. Sheldon-Galloway and Rep. Usher voting no. Rep. Manzella and Rep. M. Regier voted by proxy. Rep. Kelker will carry the bill.

EXECUTIVE ACTION ON SB 118

Discussion:
02:37:57 Helen Thigpen, LSD

02:38:19 **Motion:** Rep. Berglee moved that **SB 118 BE CONCURRED IN**.

Discussion:
02:38:29 Rep. Wagoner
02:38:33 Rep. Court

02:38:53 **Vote:** Motion carried unanimously by voice vote. Rep. Manzella and Rep. M. Regier voted by proxy. Rep. Wagoner will carry the bill.

EXECUTIVE ACTION ON SB 167

Discussion:
02:40:01 Helen Thigpen, LSD

02:40:21 **Motion:** Rep. Berglee moved that **SB 167 BE CONCURRED IN**.

Discussion:
02:40:29 Rep. Eck
02:40:47 Rep. Wagoner
02:41:17 Helen Thigpen, LSD
02:41:26 Rep. Usher
02:42:05 Helen Thigpen, LSD

02:42:28 **Vote:** Motion carried unanimously by voice vote. Rep. Manzella and Rep. M. Regier voted by proxy. Rep. Usher will carry the bill.

EXECUTIVE ACTION ON HB 477

Discussion:
02:43:27 Helen Thigpen, LSD

02:43:48 **Motion:** Rep. Berglee moved that **HB 477 DO PASS**.

Discussion:
02:43:54 Rep. Hill Smith
02:45:00 Rep. Kelker
02:45:40 Rep. Eck
02:46:29 Rep. B. Brown
02:47:20 Rep. Hill Smith
02:49:06 Rep. Usher
02:49:59 Rep. Morigeau
02:50:55 Rep. Berglee
02:51:50 Chair Doane
02:52:31 Rep. McConnell
02:54:48 Rep. Eck
02:55:45 Rep. Usher
02:56:48 Rep. Harris
02:58:46 Rep. Kelker
03:00:34 Rep. Wagoner
03:02:44 Rep. Morigeau
03:06:25 Rep. Hill Smith
03:08:44 Rep. Usher

03:09:19 **Substitute Motion/Vote:** Rep. B. Brown made a substitute motion that **HB 477 BE TABLED**. Substitute Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Manzella and Rep. M. Regier voted by proxy.

ADJOURNMENT

Adjournment: 03:10:42

_____
Sara Fleming, Secretary

sf

Additional Documents:

EXHIBIT(juh61aad.pdf)

EXHIBIT 1
DATE 3/24/17
SB 29

Law and Justice Interim Committee Proposed Legislation for 2017 Legislature

Bill #	LIC#	Short Title	Description	Sponsor
SB 29	lj01	Revising laws regarding sexual crimes	Revises the definition of "consent" so that proof of force is no longer required; instead, "consent" is defined in a positive fashion requiring "words or overt actions indicating freely given agreement". The revised definition is similar to the Uniform Code of Military Justice and the definition of "consent" used in Wisconsin. Creates a new crime of aggravated sexual intercourse without consent, which requires proof of force and has more significant penalties.	Senator Diane Sands
SB 26	lj03	Revising laws regarding sexual intercourse without consent	Provides a maximum penalty of 5 years in prison for sexual intercourse without consent when: (1) an offender is 18 years of age or younger and the victim is 14 years of age or older, (2) the offense is a first offense, and (3) no force was used. Provides that an 18-year-old who is convicted of sexual intercourse without consent involving a victim who is age 14 or older does not have to register as a sex offender as long as force was not used.	Senator Sue Malek
HB 129	lj02b	Revising laws related to privacy in communications	Creates a new subsection under the crime of privacy in communications for distributing a visual or print medium of a person who is identifiable, engaged in sexual conduct, and who has not consented to the creation of the visual or print medium. The maximum fine for a second offense was also raised from $1,000 to $5,000.	Representative Ellie Hill
SB 30	lj04	Revising laws related to criminal statutes of limitations	Extends the statute of limitations for sex crimes with victims who are under the age of 18 years to 20 years after the victim reaches the age of 18.	Senator Diane Sands
SB 17	lj05	Revising laws related to juvenile offenders and registration as a sex offender	Revises the Youth Court Act so that sexual offenders who are juveniles when convicted do not have to register as sex offenders unless the court finds that registration is necessary to protect the public.	Senator Nels Swandal
SB 22	lj06	Revise sexual assault and parental rights laws	Allows for termination of the parent-child legal relationship by court order if the parent was convicted or if the court finds by clear and convincing evidence that the parent committed an act of sexual assault, rape, or incest and the child was born as a result of that act. Creates a process by which the victim of the act can file a petition with the court to terminate the parental rights of the other parent.	Senator Sue Malek
Not introduced		Revise incest laws (LC 303)	Revises the crime of incest to provide that consent is not a defense under this section if the victim is less than 18 years old.	Representative Jenny Eck

Last updated 12/15/2016

EXHIBIT 2
DATE 3/24/17
SB 29

PREVENTION is possible

Sexual Assault Awareness Month

WHAT IS SEXUAL VIOLENCE?

Sexual violence happens in every community and affects people of all genders and ages. The impacts of sexual violence affect individuals, families, communities, and society as a whole. But prevention is possible. Together, we can change the conditions that contribute to sexual violence. You can learn the facts about sexual violence and play an active role in changing misconceptions.

What is sexual violence?

Sexual violence is any type of unwanted sexual contact. This can include words and actions of a sexual nature against a person's will and without their consent.

Consent is voluntary, mutual, and can be withdrawn at any time. Reasons someone might not consent include fear, age, illness, disability, and/or influence of alcohol or other drugs.

A person may use force, threats, manipulation, or coercion to commit sexual violence. Anyone can experience sexual violence, including children, teens, adults, and elders. Those who sexually abuse can be acquaintances, family members, trusted individuals, or strangers.

Forms of sexual violence

- Rape or sexual assault
- Child sexual assault and incest
- Sexual assault by a person's spouse or partner
- Unwanted sexual contact/touching
- Sexual harassment
- Sexual exploitation and trafficking
- Exposing one's genitals or naked body to other(s) without consent
- Masturbating in public
- Watching someone in private acts without their knowledge or permission

Facts about sexual violence

Sexual violence affects people of all genders, ages, races, religions, incomes, abilities, professions, ethnicities, and sexual orientations. There is a social context that surrounds sexual violence: oppression and social norms that allow for sexism, racism, and other forms of inequality are all contributing factors.

- Nearly 1 in 5 women in the United States have experienced rape or attempted rape some time in their lives (Black et al., 2011).
- In the United States, 1 in 71 men have experienced rape or attempted rape (Black et al., 2011).
- An estimated 32.3% of multiracial women, 27.5% of American Indian/Alaska Native women, 21.2% of non-Hispanic black women, 20.5% of non-Hispanic white women, and 13.6% of Hispanic women were raped during their lifetimes (Black et al., 2011).
- Nearly 1 in 2 women and 1 in 5 men have experienced sexual violence victimization other than rape at some point in their lifetime (Black et al., 2011).

Victims often know the person who sexually assaulted them.

People who sexually abuse usually target someone they know – a friend, classmate, neighbor, coworker, or relative.

NSVRC 123 N. Enola Drive, Enola, PA 17025 | (877) 739-3895
www.nsvrc.org/saam | email: resources@nsvrc.org

PREVENTION is possible

Sexual Assault Awareness Month

- Nearly 3 out of 4 adolescents (74%) who have been sexually assaulted were victimized by someone they knew well. One-fifth (21.1%) were committed by a family member (Kilpatrick, Saunders, & Smith, 2003).
- In 2005-10, about 55% of rape or sexual assault victimizations occurred at or near the victim's home, and another 12% occurred at or near the home of a friend, relative, or acquaintance (Planty, Langton, Krebs, Berzofsky, & Smiley-McDonald, 2013).

Victims are never at fault.

It doesn't matter what someone is wearing or how they are acting, victims are never to blame. A person may use force, threats, manipulation, or coercion to commit sexual violence. An absence of injuries to the victim does not indicate consent.

Rape is often not reported or convicted.

Many victims who do report a rape or sexual assault find that there is no arrest or conviction.

- The majority of sexual assaults, an estimated 63%, are never reported to the police (Rennison, 2002).
- The prevalence of false reporting cases of sexual violence is low (Lisak et al., 2010), yet when survivors come forward, many face scrutiny or encounter barriers.

There are many reasons why someone may choose not to report to law enforcement or tell anyone about an experience. Some include:

- Concern about not being believed
- Fear of the attackers getting back at them
- Shame or fear of being blamed
- Pressure from others not to tell
- Distrust of law enforcement
- Belief that there is not enough evidence
- Desire to protect the attacker

Sexual violence is preventable.

We can all help create a culture of empathy, respect, and equity. Prevention starts with challenging victim-blaming and believing survivors when they disclose. In your personal life, you can model supportive relationships and behaviors and speak up when you hear sexist, racist, transphobic, or homophobic comments. Each of us is essential in challenging harmful attitudes and the societal acceptance of rape.

Help is available.

Local sexual assault centers can provide help. In crisis situations, contact 1-800-656-4673. For more information, visit www.nsvrc.org.

References

Black, M. C., Basile, K. C., Breiding, M. J., Smith, S. G., Walters, M. L., Merrick, M. T., Chen, J., & Stevens, M. R. (2011). National Intimate Partner and Sexual Violence Survey: 2010 summary report. Retrieved from the National Center for Injury Prevention and Control, Centers for Disease Control and Prevention: http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf

Kilpatrick, D. G., Saunders, B. E., & Smith, D. W. (2003). *Youth victimization: Prevalence and implications* (NIJ Research Brief NCJ 194972). Retrieved from the National Criminal Justice Reference Service: https://www.ncjrs.gov/pdffiles1/nij/194972.pdf

Lisak, D., Gardinier, L., Nicksa, S. C., & Cote, A. M. (2010). False allegations of sexual assault: An analysis of ten years of reported cases. *Violence Against Women*, 16, 1318-1334. doi:10.1177/1077801210387747

Planty, M., Langton, L., Krebs, C., Berzofsky, M., & Smiley-McDonald, H. (2013). Female victims of sexual violence, 1994-2010 (NCJ 240655). Retrieved from the U.S. Department of Justice, Bureau of Justice Statistics: http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf

Rennison, C. A. (2002). *Rape and sexual assault: Reporting to police and medical attention*, 1992-2000 [NCJ 194530]. Retrieved from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics: http://www.bjs.gov/content/pub/pdf/rsarp00.pdf

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EXHIBIT 3
DATE 3/29/17
SB 29

March 22, 2017

To: House Judiciary Committee, Montana Legislature
From: Drew Colling, LCPC
Re: SB 29: Revising Laws Related to Sexual Crimes (Sponsor: Sands, Missoula).

Good morning, Mr. Chairman and Members of the House Judiciary Committee. For the record, my name is Drew Colling and I am a Licensed Clinical Professional Counselor.

I write to provide support for SB 29.

In recent years the neurobiology of trauma has been an important focus of research. Rebecca Campbell, Ph.D., has reviewed this scientific literature and in particular the effects of trauma on the brain during sexual assault. Her findings clarify our understanding of the ways in which a victim may experience sexual assault and provide answers to important questions people have about victim responses to traumatic events.

According to Campbell, the three primary responses to a traumatic situation are freeze, flight or fight. The state of being frozen has been an issue in sexual assault, because deeply enculturated rape myths insist the only 'correct' response is to fight or flee. Yet again and again, victims have reported feeling frozen. We now know that the state of being frozen during a traumatic event is called "tonic immobility" (Campbell 2012). As further and more local evidence, the UM Safe Campus Survey 2016 (Fiore, C., & Pepper, A. *2016)* found that 83.3% of respondents who reported experiencing sexual assault also reported a freeze response to the event. As a basic mammalian response hard-wired for our survival, it is uncontrollable, and typified by an inability to physically move the body or speak. This freeze response is well represented in the scientific literature, reported again and again by victims of sexual assault, and commonly experienced.

Another important issue addressed by Campbell's analysis and summation of the research literature addresses the 'lack of emotion' of victims following an assault. This response can seem counterintuitive to both the victim and other people. However, during a sexual assault opiates are released in very high levels in order to block physical and emotional pain. These strong opiates are "not sensitive to subtleties" (Campbell 2012) and can dramatically flatten affect causing the victim to appear distanced from the event, unemotional, or uninvolved. This flattened affect is one way a victim can experience trauma and should not be used as an argument that the person was not unduly distressed. This is another endemic rape myth that negatively affects victims in their recovery and in the prosecution of the crime committed against them.

Moreover, Campbell's review of the literature also found that when victims experience coercive sexual assault, the capacity for rational thought is diminished. Problem-solving and other thought-processes are likely not accessible to a victim during trauma. Every one of us has experienced significant stress at one time or another in our lives and can relate to how difficult it is to use rational thought to process through the experience. Sexual assault is experienced as life threatening by victims and rational thought is suppressed in order to respond instantly for survival. Again, the rape myth that the victim didn't rationally and logically try to stop the

assault has been successfully and wrongfully used as evidence for the defense in many legal actions.

In summary, there are harmful rape myths that are firmly entrenched in our culture and evidenced in our legal system. The science of the neurobiology of trauma directly refutes these myths. Again, the myths suggest:

1. That a freeze response equals consent (the person did not fight typically someone larger and stronger and did not try to flee typically someone faster and stronger and therefore 'participated' in the rape.
2. That a lack of affect during and after the assault means that the person was once again 'participating' because they did not seem 'sufficiently emotional' or 'involved' afterward.
3. That a lack of rational logical thought related to figuring out how to escape the situation if they didn't want to participate is evidence that they, indeed, chose to participate in the rape.

The science we have on the neurobiology of trauma disputes these rape myths and should put the issue to rest. Unfortunately, our laws do not yet reflect the science and re-victimization through our legal system continues pervasively and systemically.

Finally, I would like to speak from my experience as a therapist who has worked with many victims of sexual assault over the years. One of the greatest challenges to reducing the shockingly high incidence of sexual assault is the fact that many are afraid of the reporting process. The rape myths described above (and others) are so deeply enculturated that victims are afraid they will not be believed and that they will be blamed for the assault or that they somehow 'deserved' it (i.e., 'if I hadn't been drinking,' or 'I shouldn't have been walking alone' or 'I should have worn different clothing') rather than putting the blame squarely where it belongs—on the one who perpetrated the crime. No one 'deserves' to be sexually assaulted or 'asks' for a violent act to be committed against them, period. The law should reflect the right of basic safety and self-determination for every adult. The way the law is currently written causes clients to believe (and this belief is supported through the appalling lack of convictions) that receiving justice through the court process impossible. Our wide-spread societal belief in the rape myths and the constant presence of these myths as evidence used against victims in our legal system deters victims from even reaching out for help let alone reporting to law enforcement. This creates a system that favors perpetrators, deeply harms victims, and supports a rape culture that flourishes unchecked.

Over the past four year Missoula has worked tirelessly to improve our collective response to victims of sexual assault. Law enforcement, medical providers, advocates and attorneys have come together to improve the system to make it fair rather than stacked against victims as much as we can. It is now up to our lawmakers to reflect the scientific reality of sexual assault in the law. I have no doubt that the proposed changes will assist us to do what we believe our justice system is there to do—that is, protect victims and hold offenders accountable. The power of the law can be used to destroy rape culture and make our communities safe from the ravages of sexual assault.

I urge you to pass SB 29. Thank you for your time and attention.

Fiore, C., & Pepper, A. *UM Safe Campus SURVEY, 2016.*

Campbell, R. (2012, December 3). *The Neurobiology of Sexual Assault.* In *National Institute of Justice*. Retrieved January 5, 2017, from https://www.nij.gov/multimedia/presenter/presenter-campbell/pages/presenter-campbell-transcript.aspx

Montana State Legislature

65th Montana Legislature - 2017

ADDITIONAL DOCUMENTS

Business Report

Signed by Chairman

Roll Call

Attendance

Standing Committee Reports

Tabled Bills

Fiscal Reports

Roll Call Votes

Proxy Forms

Visitor Registration

Additional Documents

Witness Statements that are not presented as exhibits. All informational items handed in after meeting. Petitions; etcetera.

- **Any documents which were submitted after the committee hearing has ended and/or was submitted late within 24 hours regarding information in the committee hearing.**

YOU MAY VIEW THE ORIGINAL DOCUMENTS

AT THE MONTANA HISTORICAL SOCIETY

MONTANA HISTORICAL SOCIETY ARCHIVES
225 N. ROBERTS
HELENA, MT 59620-1201
2017 LEGISLATIVE SESSION
E-DOCUMENT SPECIALIST: SUSIE HAMILTON

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Friday, March 24, 2017 **Time:** 8:00 AM
Place: Capitol **Room:** 137

BILLS and RESOLUTIONS HEARD:
SB 17 - Revise laws related to juvenile offenders and registration as sex offender - Sen. Nels Swandal
SB 26 - Revise laws regarding sexual intercourse without consent - Sen. Sue Malek
SB 29 - Revising laws regarding sexual crimes - Sen. Diane Sands
SB 30 - Revise laws related to criminal statute of limitations - Sen. Diane Sands

EXECUTIVE ACTION TAKEN:
SB 17 - Be Concurred
SB 45 - Be Concurred In
SB 118 - Be Concurred in
SB 167 - Be Concurred In
HB 477 - Be Tabled

Comments:

REP. Alan Doane, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE: 3/24/17

NAME	PRESENT	ABSENT/EXCUSED
REP. SETH BERGLEE, VICE CHAIR		✓
REP. VIRGINIA COURT, VICE CHAIR	✓	
REP. KATHY KELKER	✓	
REP. BOB BROWN	✓	
REP. BARRY USHER	✓	
REP. DALE MORTENSEN	✓	
REP. JENNY ECK		✓
REP. LAURIE BISHOP	✓	
REP. ELLIE HILL SMITH		✓
REP. NATE MCCONNELL	✓	
REP. KIRK WAGONER	✓	
REP. MATT REGIER		✓
REP. BILL HARRIS		✓
REP. LOLA SHELDON-GALLOWAY		✓
REP. THERESA MANZELLA		✓
REP. CASEY KNUDSEN	✓	
REP. ZAC PERRY	✓	
REP. SHANE MORIGEAU	✓	
REP. ALAN DOANE, CHAIR	✓	

19 MEMBERS

HOUSE STANDING COMMITTEE REPORT

March 24, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 167** (third reading copy -- blue) **be concurred in.**

Signed: Alan J Doane
Representative Alan Doane, Chair

To be carried by Representative Barry Usher

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

SB0167001SC17704.hts

VP 12:30 3-24-17

HOUSE STANDING COMMITTEE REPORT

March 24, 2017
Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 118** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Kirk Wagoner

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

SB0118001SC15257.hts

VP 12:30 3-24-17

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 45** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Kathy Kelker

- END -

Committee Vote:
Yes 16, No 3
Fiscal Note Required __

SB0045001SC16507.hts

VP 12:30 3-24-17

HOUSE STANDING COMMITTEE REPORT

March 24, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 17** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Laurie Bishop

- END -

Committee Vote:
Yes 15, No 4
Fiscal Note Required __

SB0017001SC17723.hts

VP 12:30 3-24-17

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE JUDICIARY COMMITTEE

The **HOUSE JUDICIARY COMMITTEE** TABLED

HB 477 - Revise laws related to adolescent treatment facilities - Rep. Ellie Hill Smith

by motion, on **Friday, March 24, 2017** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Sara Fleming
(For the Committee)

VP
(For the Chief Clerk of the House)

1:40 (Time) 3-24-17 (Date)

March 24, 2017 (1:33pm) Sara Fleming, Secretary Phone: 444-4709

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB17 DATE 3/24/17

MOTION Be concurred In

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR	✓		
REP. KATHY KELKER	✓		
REP. BOB BROWN	✓		
REP. BARRY USHER		✓	
REP. DALE MORTENSEN	✓		
REP. JENNY ECK	✓		
REP. LAURIE BISHOP	✓		
REP. ELLIE HILL-SMITH	✓		
REP. NATE MCCONNELL	✓		
REP. KIRK WAGONER	✓		
REP. MATT REGIER		✓	✓
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY		✓	
REP. THERESA MANZELLA		✓	✓
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY	✓		
REP. SHANE MORIGEAU	✓		
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB45 DATE 3/24/17

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR	✓		
REP. KATHY KELKER	✓		
REP. BOB BROWN		✓	
REP. BARRY USHER		✓	
REP. DALE MORTENSEN	✓		
REP. JENNY ECK	✓		
REP. LAURIE BISHOP	✓		
REP. ELLIE HILL-SMITH	✓		
REP. NATE MCCONNELL	✓		
REP. KIRK WAGONER	✓		
REP. MATT REGIER	✓		✓
REP. BILL HARRIS	✓	✓	
REP. LOLA SHELDON-GALLOWAY	✓	✓	✓
REP. THERESA MANZELLA	✓		✓
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY	✓		
REP. SHANE MORIGEAU	✓		
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB477 DATE 3/24/17

MOTION Be Tabled

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR		✓	
REP. KATHY KELKER		✓	
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP		✓	
REP. ELLIE HILL-SMITH		✓	
REP. NATE MCCONNELL		✓	
REP. KIRK WAGONER	✓		
REP. MATT REGIER	✓		✓
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY	✓		
REP. THERESA MANZELLA	✓		✓
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY		✓	
REP. SHANE MORIGEAU		✓	
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Berglee.

BILL	AYE	NO
SB 17		X
SB 45	X	
SB 118	X	
SB 167	X	
Table HB 477	X	X

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. _____ Date 3/24/17
(Signature)

Reger

s:\2017 house session\chief clerk office\proxies\committee of the whole proxy 2017.docx

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. _____.

BILL	AYE	NO
SB 17		X
SB 45	X	
SB 118	X	
SB 167	X	
HB ~~SB~~ 487	X	~~X~~

Table

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. Theresa Manzella Date 3/24/17
(Signature)

Manzella

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 24, 2017
SB 17 - Revise laws related to juvenile offenders and registration as sex offender
Sponsor: **Sen. Nels Swandal**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Sk Rossi	ACLU	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 24, 2017
SB 26 - Revise laws regarding sexual intercourse without consent
Sponsor: **Sen. Sue Malek**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
JK Rossi	ACLU	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 24, 2017
SB 29 - Revising laws regarding sexual crimes
Sponsor: **Sen. Diane Sands**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Col Beverly G. Schneider	DMA			✓
Abigail Bakker	MSUM	X		
Mark Murphy	MCRR	X		
Melissa Brown	Self	X		
Jen Clark	Self / Missoula Co.	X		
Suzy Boylan	Missoula Co.			
Mary Cochenour	Dept of Justice	X		
Tim Fox	MT Dept. of Justice	X		
SK Rossi	ACLU	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 24, 2017
SB 30 - Revise laws related to criminal statute of limitations
Sponsor: **Sen. Diane Sands**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Mary Cochenour	Department of Justice	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MISSOULA COUNTY

RELATIONSHIP VIOLENCE SERVICES
317 Woody Street
Mailing Address: 200 West Broadway
Missoula MT 59802-4292 | (406) 258-3830 | www.co.missoula.mt.us/RVS

MISSOULA

Crime Victim Advocate Program | JUST Response | Healthy Relationships Project

March 23, 2017

To: House Judiciary Committee, Chairman Alan Doane
From: Missoula Relationship Violence Services of the Department of Grants and Community Programs
Re: SB 26 – Revising laws regarding sexual intercourse without consent

Missoula City-County Relationship Violence Services appreciates the opportunity to submit written testimony in support of SB 26.

Relationship Violence Services —established in 1985 as the Crime Victim Advocate Program —is one of the oldest legal advocacy programs in Montana. Our program provides free and confidential assistance to victims of relationship violence, sexual assault, stalking, and other violent crimes. Our program offers victim advocacy, crisis counseling, and support; provides information and referrals to community-based services; and, upholds victims' rights within the criminal justice system. We strongly support SB 26 sponsored by Senator Malek.

The proposed revision to the laws regarding sex crimes and sexual intercourse without consent has been created after extensive study. We applaud the committee's efforts and commitments to study these complex issues and propose legislation that will improve outcomes for victims of these crimes and hold offenders accountable. Among other proposed changes, we are confident that revising the definition of consent will have a lasting and positive effect on the prosecution of sex crimes in Montana.

Sexual offenders create untold trauma in the lives of their victims. Rape is one of the most violent and damaging of crimes a person can experience. The intervention of law enforcement and the criminal justice system can play a critical role in the recovery of victims... or can cause new trauma, defending on the effectiveness of the response. Our statutes and responses should protect the innocent and hold the perpetrators accountable. The proposed changes in SB 26 will go a long way in creating this positive change.

Thank you for your time and attention to this important issue. I strongly urge you to vote **YES on SB 26**. I am available to provide further information if you have any questions.

Sincerely,

Shantelle Gaynor
Department Manager
Relationship Violence Services
(406) 258-4650 | sgaynor@missoulacounty.us

ADDITIONAL DOCUMENTS

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Alan Doane, on March 31, 2017 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Alan Doane, Chair (R)
Rep. Seth Berglee, Vice Chair (R)
Rep. Virginia Court, Vice Chair (D)
Rep. Laurie Bishop (D)
Rep. Bob Brown (R)
Rep. Jennifer Eck (D)
Rep. Bill Harris (R)
Rep. Kathy Kelker (D)
Rep. Casey Knudsen (R)
Rep. Theresa Manzella (R)
Rep. Shane A. Morigeau (D)
Rep. Dale Mortensen (R)
Rep. Zac Perry (D)
Rep. Lola Sheldon-Galloway (R)
Rep. Barry Usher (R)
Rep. Kirk Wagoner (R)

Members Excused:

Rep. Ellie Hill Smith (D)
Rep. Nate McConnell (D)
Rep. Matt Regier (R)
Rep. Barry Usher (R)

Members Absent: None

Staff Present: Sara Fleming, Committee Secretary
Helen Thigpen, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 22, 3/24/2017; SB 153, 3/24/2017; SB 197, 3/24/2017
Executive Action: SB 29, SB 99, SB 30, SB 26, SB 117, SB 179, SJ 15, SB 268

HEARING ON SB 197

Opening Statement by Sponsor:

00:01:19 Sen. Terry Gauthier (R), SD 40, opened the hearing on SB 197, Require child sexual abuse prevention efforts.

00:09:35 Rep. McConnell and Rep. Regier joined the meeting.

Proponents' Testimony:

00:12:25 Brian Kahn, Self
00:13:11 Rep. Usher joined the meeting.
00:14:57 Abigail St. Lawrence, Montana Association of Christians (MAC)
00:16:45 Greg Dorrington, Montana Medical Association (MMA)
00:17:39 Robin Turner, Montana Coalition Against Domestic and Sexual Violence (MCADSV)

Opponents' Testimony: None

Informational Testimony:

00:19:00 Greg Mohr, Self

Questions from Committee Members and Responses:

00:19:23 Rep. McConnell
00:20:00 Sen. Gauthier
00:21:53 Rep. Court
00:22:15 Sen. Gauthier
00:22:34 Rep. Bishop
00:23:21 Sen. Gauthier
00:27:00 Rep. Usher
00:27:08 Rep. Court left the meeting.
00:29:48 Chair Doane
00:30:01 Rep. Manzella
00:31:52 Sen. Gauthier
00:33:37 Rep. Usher
00:34:02 Sen. Gauthier
00:35:57 Rep. Harris
00:36:53 Sen. Gauthier
00:38:08 Rep. Bishop
00:39:08 Sen. Gauthier
00:39:22 Rep. Eck left the meeting.
00:40:52 Rep. B. Brown
00:41:28 Sen. Gauthier
00:42:57 Helen Thigpen, Legislative Services Division (LSD)
00:43:26 Rep. Sheldon-Galloway
00:44:16 Sen. Gauthier

Closing by Sponsor:

00:44:56 Sen. Gauthier

HEARING ON SB 22

Opening Statement by Sponsor:

00:46:55 Sen. Sue Malek (D), SD 46, opened the hearing on SB 22, Revise laws re termination of parental rights when child is result of rape.

Proponents' Testimony:

00:49:58 Deb Matteucci, Montana Board of Crime Control (MBCC)
00:52:51 Brandi Ries, Ries Law Group
00:56:11 Shantelle Gaynor, Missoula Relationship Violence Services
00:58:19 Hannah Stark, Montana State University (MSU)
01:00:29 Jon Bennion, Department of Justice (DOJ)
01:01:02 Robin Turner, Montana Coalition Against Domestic and Sexual Violence (MCADSV)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

01:03:31 Rep. McConnell
01:03:48 Helen Thigpen, Legislative Services Division (LSD)
01:04:20 Rep. McConnell
01:04:43 Brandi Ries, Ries Law Group

Closing by Sponsor:

01:05:18 Sen. Malek

HEARING ON SB 153

Opening Statement by Sponsor:

01:07:34 Sen. Margaret (Margie) MacDonald (D), SD 26, opened the hearing on SB 153, Revise laws on strangulation of a partner or family member.

Proponents' Testimony:

01:10:37 Juli Pierce, Yellowstone County
EXHIBIT(juh67a01)

01:18:35 Ole Olson, Department of Justice (DOJ)
EXHIBIT(juh67a02)

01:21:30 Hannah Stark, Montana State University (MSU)
01:24:28 Benjamin Halvorson, Billings
01:26:35 Marti Lambert, Gallatin County
01:27:54 Robin Turner, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
EXHIBIT(juh67a03)

01:30:46 Shantelle Gaynor, Missoula Relationship Violence Services

01:35:18 Mark Murphy, Montana County Attorneys Association (MCAA) Montana Association of Chiefs of Police (MACOP), Montana Police Protective Association (MPPA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
01:36:12 Rep. Manzella
01:36:48 Ole Olson, DOJ
01:39:19 Rep. Morigeau
01:39:41 Ole Olson, DOJ
01:40:07 Rep. Mortensen
01:40:40 Juli Pierce, Yellowstone County
01:41:42 Rep. Usher
01:42:42 Benjamin Halvorson, Billings
01:43:31 Rep. Usher
01:44:12 Sen. MacDonald
01:44:45 Rep. Usher
01:46:02 Ole Olson, DOJ
01:47:48 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
01:49:02 Rep. Sheldon-Galloway
01:49:48 Ole Olson, DOJ
01:51:18 Rep. Bishop
01:52:05 Juli Pierce, Yellowstone County
01:54:19 Rep. Morigeau
01:54:23 Rep. Usher
01:54:54 Juli Pierce, Yellowstone County
01:55:16 Rep. McConnell
01:55:38 Juli Pierce, Yellowstone County

Closing by Sponsor:
01:57:34 Sen. MacDonald

02:00:07 Recess
02:13:40 Reconvene

HEARING ON SB 250

Opening Statement by Sponsor:
02:13:43 Sen. Nels Swandal (R), SD 30, opened the hearing on SB 250, Revise laws for prosecutorial immunity for Marsy's law.

Proponents' Testimony:
02:15:39 Mark Lambert, Self
02:18:00 Rich McLane, Bozeman Police Department, Montana Association of Chiefs of Police (MACOP)

02:21:15 Mark Murphy, Montana County Attorneys Association (MCAA), Montana Association of Chiefs of Police (MACOP), Montana Police Protective Association (MPPA)
02:23:36 Jon Bennion, Department of Justice (DOJ)
02:25:29 Dave Galt, Montana Sheriffs and Peace Officers Association (MSPOA)
02:25:45 Sara Sexe, Great Falls
EXHIBIT(juh67a04)

02:30:58 Adrianne Cotton, Department of Corrections (COR)

Opponents' Testimony: None

Informational Testimony:
02:32:14 Al Smith, Montana Trial Lawyers Association (MTLA)
02:35:48 Chuck Denowh, Marsy's Law For All

Questions from Committee Members and Responses:
02:36:23 Rep. McConnell
02:36:42 Sen. Swandal
02:37:32 Rep. C. Knudsen
02:37:51 Chuck Denowh, Marsy's Law For All
02:39:06 Chair Doane
02:39:31 Jon Bennion, DOJ
02:40:37 Rep. McConnell
02:41:08 Jon Bennion, DOJ
02:41:55 Rep. McConnell
02:42:25 Sen. Swandal
02:42:45 Rep. B. Brown
02:43:28 Sen. Swandal
02:44:57 Rep. C. Knudsen
02:46:17 Sen. Swandal
02:47:18 Rep. Usher
02:47:58 Sen. Swandal

Closing by Sponsor:
02:48:11 Sen. Swandal

Committee Business:
02:48:48 Rep. Kelker
02:48:55 Chair Doane

02:49:35 Recess
02:58:53 Reconvene

EXECUTIVE ACTION ON SB 29

Discussion:
02:59:57 Helen Thigpen, Legislative Services Division (LSD)

03:00:52 **Motion:** Rep. Berglee moved that **SB 29 BE CONCURRED IN**.

03:01:04 **Motion:** Rep. Wagoner moved that **SB 29 BE AMENDED**.
EXHIBIT(juh67a05)

Discussion:
03:01:22 Helen Thigpen, LSD

03:01:57 **Vote:** Motion carried unanimously by voice vote. Rep. Court, Rep. Eck, Rep. Hill Smith and Rep. Perry voted by proxy.

03:02:11 Rep. Eck joined the meeting

03:02:37 **Motion:** Rep. Berglee moved that **SB 29 BE CONCURRED IN AS AMENDED**.

Discussion:
03:02:48 Rep. Regier

03:03:27 **Vote:** Motion carried unanimously by voice vote. Rep. Court, Rep. Hill Smith and Rep. Perry voted by proxy. Rep. McConnell will carry the bill.

EXECUTIVE ACTION ON SB 99

Discussion:
03:04:12 Helen Thigpen, LSD

03:04:42 **Motion:** Rep. Berglee moved that **SB 99 BE CONCURRED IN**.

03:04:49 **Motion:** Rep. Berglee moved that **SB 99 BE AMENDED**.
EXHIBIT(juh67a06)

Discussion:
03:04:59 Helen Thigpen, LSD
03:06:09 Rep. Berglee
03:06:28 Rep. B. Brown
03:06:34 Rep. Berglee

03:07:01 **Vote:** Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Court, Rep. Hill Smith and Rep. Perry voted by proxy.

03:07:37 Rep. Wagoner left the meeting

03:08:32 **Motion/Vote:** Rep. Berglee moved that **SB 99 BE CONCURRED IN AS AMENDED**. Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Court, Rep. Hill Smith, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Berglee will carry the bill.

EXECUTIVE ACTION ON SB 30

Discussion:
03:09:35 Helen Thigpen, LSD

03:09:55 **Motion:** Rep. Berglee moved that **SB 30 BE CONCURRED IN**.

Discussion:
03:11:27 Rep. C. Knudsen
03:11:57 Rep. McConnell
03:13:49 Rep. Usher

03:14:33 **Vote:** Motion carried unanimously by voice vote. Rep. Court, Rep. Hill Smith, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Kelker will carry the bill.

EXECUTIVE ACTION ON SB 26

Discussion:
03:15:29 Helen Thigpen, LSD

03:16:04 **Motion:** Rep. Berglee moved that **SB 26 BE CONCURRED IN**.

Discussion:
03:16:13 Rep. Bishop
03:16:45 Rep. Morigeau left the meeting.

03:17:12 **Vote:** Motion carried unanimously by voice vote. Rep. Court, Rep. Hill Smith, Rep. Morigeau, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Manzella will carry the bill.

EXECUTIVE ACTION ON SB 117

Discussion:
03:18:10 Helen Thigpen, LSD

03:18:39 **Motion:** Rep. Berglee moved that **SB 117 BE CONCURRED IN**.

Discussion:
03:18:50 Rep. B. Brown
03:19:25 Rep. Usher
03:19:31 Rep. Morigeau joined the meeting.
03:19:43 Helen Thigpen, LSD
03:20:01 Rep. Bishop
03:21:36 Rep. C. Knudsen

03:21:59 **Vote:** Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Court, Rep. Hill Smith, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Manzella will carry the bill.

EXECUTIVE ACTION ON SB 179

Discussion:
03:23:44 Helen Thigpen, LSD

03:24:02 **Motion:** Rep. Berglee moved that **SB 179 BE CONCURRED IN**.

Discussion:
03:24:11 Rep. McConnell
03:24:52 Chair Doane
03:24:54 Rep. McConnell
03:26:47 Rep. B. Brown
03:26:52 Rep. Usher

03:27:30 **Vote:** Motion failed 3-16 by roll call vote with Rep. Bishop, Rep. Eck and Rep. Morigeau voting aye. Rep. Court, Rep. Hill Smith, Rep. Perry and Rep. Wagoner voted by proxy.

03:28:46 **Substitute Motion:** Rep. Berglee moved that **SB 179 BE TABLED**. Motion was without objection.

Discussion:
03:28:50 Rep. Hill Smith joined the meeting.
03:28:57 Rep. McConnell

EXECUTIVE ACTION ON SJ 15

Discussion:
03:29:31 Helen Thigpen, LSD

03:29:58 **Motion:** Rep. Berglee moved that **SJ 15 BE CONCURRED IN**.

Discussion:
03:30:08 Rep. Morigeau
03:32:46 Rep. Manzella
03:33:35 Rep. Harris
03:34:02 Rep. Usher
03:35:20 Rep. Morigeau

03:36:05 **Vote:** Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Court, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Manzella will carry the bill.

EXECUTIVE ACTION ON SB 268

Discussion:
03:37:10 Helen Thigpen, LSD

03:38:38 **Motion:** Rep. Berglee moved that **SB 268 BE CONCURRED IN**.

03:38:51 **Motion:** Rep. Berglee moved that **SB 268 BE AMENDED**.
EXHIBIT(juh67a07)

Discussion:
03:39:15 Rep. Kelker
03:39:48 Helen Thigpen, LSD
03:40:24 Rep. Manzella
03:40:39 Rep. McConnell
03:41:09 Chair Doane
03:41:14 Rep. McConnell
03:41:52 Rep. Eck
03:42:14 Rep. Bishop
03:43:08 Chair Doane
03:43:13 Rep. Bishop
03:43:24 Rep. Berglee
03:43:45 Rep. Harris
03:43:59 Helen Thigpen, LSD
03:45:48 Rep. Harris

03:46:37 **Vote:** Motion carried 17-2 by roll call vote with Rep. Harris and Rep. Sheldon-Galloway voting no. Rep. Court, Rep. Wagoner and Rep. Perry voted by proxy.

03:47:34 **Motion:** Rep. Berglee moved that **SB 268 BE CONCURRED IN AS AMENDED**.

Discussion:
03:47:42 Rep. Eck
03:48:16 Rep. C. Knudsen
03:48:51 Rep. McConnell

03:49:14 **Vote:** Motion carried 15-4 by roll call vote with Rep. Eck, Rep. Harris, Rep. McConnell and Rep. Sheldon-Galloway voting no. Rep. Court, Rep. Perry and Rep. Wagoner voted by proxy. Rep. Wagoner will carry the bill.

ADJOURNMENT

Adjournment: 03:50:51

Sara Fleming, Secretary

sf

Additional Documents:

EXHIBIT(juh67aad.pdf)

EXHIBIT 5
DATE 3/31/17
SB 29

Amendments to Senate Bill No. 29
3rd Reading Copy

Requested by Representative Kirk Wagoner

For the House Judiciary Committee

Prepared by Helen Thigpen
March 31, 2017 (7:19am)

1. Page 11, line 10.
Following: "relationship"
Insert: "by itself"

2. Page 11, line 11.
Following: "does not"
Strike: "by itself"

- END -

Montana State Legislature

65th Montana Legislature - 2017

ADDITIONAL DOCUMENTS

Business Report

Signed by Chairman

Roll Call

Attendance

Standing Committee Reports

Tabled Bills

Fiscal Reports

Roll Call Votes

Proxy Forms

Visitor Registration

Additional Documents

Witness Statements that are not presented as exhibits. All informational items handed in after meeting. Petitions; etcetera.

- ***Any documents which were submitted after the committee hearing has ended and/or was submitted late within 24 hours regarding information in the committee hearing.***

YOU MAY VIEW THE ORIGINAL DOCUMENTS

AT THE MONTANA HISTORICAL SOCIETY

MONTANA HISTORICAL SOCIETY ARCHIVES
225 N. ROBERTS
HELENA, MT 59620-1201
2017 LEGISLATIVE SESSION
E-DOCUMENT SPECIALIST: SUSIE HAMILTON

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Friday, March 31, 2017
Time: 8:00 AM
Place: Capitol
Room: 137

BILLS and RESOLUTIONS HEARD:
SB 22 - Revise laws re termination of parental rights when child is result of rape - Sen. Sue Malek
SB 153 - Revise laws on strangulation of a partner or family member - Sen. Margaret (Margie) MacDonald
SB 197 - Encouraging the office of public instruction to prevent child sex trafficking - Sen. Terry Gauthier

EXECUTIVE ACTION TAKEN:
SB 29 - Be Concurred In As Amended
SB 99 - Be Concurred In As Amended
SB 30 - Be Concurred In
SB 26 - Be Concurred In
SB 117 - Be Concurred In
SB 179 - Be Tabled
SJ 15 - Be Concurred In
SB 268 - Be Concurred In As Amended

Comments:

REP. Alan Doane, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE: 3/31/17

NAME	PRESENT	ABSENT/EXCUSED
REP. SETH BERGLEE, VICE CHAIR	✓	
REP. VIRGINIA COURT, VICE CHAIR	✓	
REP. KATHY KELKER	✓	
REP. BOB BROWN	✓	
REP. BARRY USHER		✓
REP. DALE MORTENSEN	✓	
REP. JENNY ECK	✓	
REP. LAURIE BISHOP	✓	
REP. ELLIE HILL SMITH		✓
REP. NATE MCCONNELL		✓
REP. KIRK WAGONER	✓	
REP. MATT REGIER		✓
REP. BILL HARRIS	✓	
REP. LOLA SHELDON-GALLOWAY	✓	
REP. THERESA MANZELLA	✓	
REP. CASEY KNUDSEN	✓	
REP. ZAC PERRY	✓	
REP. SHANE MORIGEAU	✓	
REP. ALAN DOANE, CHAIR	✓	

19 MEMBERS

HOUSE STANDING COMMITTEE REPORT

March 31, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 117** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Allan Doane, Chair

To be carried by Representative Theresa Manzella

- END -

Committee Vote:
Yes 11, No 8
Fiscal Note Required __

SB0117001SC16510.hts

CW 12:35 03-31-17

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Joint Resolution 15** (third reading copy -- blue) **be concurred in**.

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Theresa Manzella

- END -

Committee Vote:
Yes 11, No 8
Fiscal Note Required __

SJ0015001SC16510.hts

CW 12:35 03-31-17

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 268** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Kirk Wagoner

And, that such amendments read:

1. Title, page 1, line 5.
Strike: "STATE"
Insert: "PUBLIC"
Following: "EMPLOYEE"
Insert: "OR RETIREE"

2. Page 2, line 6.
Following: line 6

"NEW SECTION. **Section 3. Compromise or settlement of claims by public employees regarding retirement service credits.** A retiree from a public employer who is a party to a compromise or settlement regarding retirement service credits or benefits may waive the right of individual privacy and allow a governmental entity to release any or all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.

Insert: "NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 19, chapter 2, part 7, and the provisions of Title 19, chapter 2, part 7, apply to [section 3]."
Renumber: subsequent sections

Committee Vote:
Yes 15, No 4
Fiscal Note Required __

SB0268001SC15257.hts

12:50 03-31-17

3. Page 2, line 11.
Strike: "2015"
Insert: "2010"

- END -

HOUSE STANDING COMMITTEE REPORT

March 31, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 26** (third reading copy -- blue) **be concurred in**.

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Laurie Bishop

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

SB0026001SC17723.hts

AW 12:35 03-31

HOUSE STANDING COMMITTEE REPORT

March 31, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 99** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Seth Berglee

And, that such amendments read:

1. Page 1, line 15.
Strike: "prohibits, restricts, or requires"
Insert: "has the primary purpose of prohibiting, restricting, or requiring"

2. Page 2, line 14.
Insert: "(4) Nothing in this section may be construed to prohibit or otherwise limit a peace officer, state employee, or employee of a political subdivision from cooperating in an action that does not have the primary purpose of enforcing a federal ban."

- END -

Committee Vote:
Yes 11, No 8
Fiscal Note Required __

SB0099001SC16493.hts

Adj. 12:35 03-31-17

HOUSE STANDING COMMITTEE REPORT

March 31, 2017
Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 30** (third reading copy -- blue) **be concurred in**.

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Kathy Kelker

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

SB0030001SC16507.hts

AM 12:35 03-31-17

HOUSE STANDING COMMITTEE REPORT

March 31, 2017

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 29** (third reading copy -- blue) be **concurred in as amended.**

Signed: _____
Representative Alan Doane, Chair

To be carried by Representative Nate McConnell

And, that such amendments read:

1. Page 11, line 10.
Following: "relationship"
Insert: "by itself"

2. Page 11, line 11.
Following: "does not"
Strike: "by itself"

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

SB0029001SC16397.hts

CW 12:30 03-31-17

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE JUDICIARY COMMITTEE

The **HOUSE JUDICIARY COMMITTEE** TABLED

SB 179 - Revise offer of judgment laws - Sen. Steve Fitzpatrick

by motion, on **Friday, March 31, 2017** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Sara Fleming
(For the Committee)

CW
(For the Chief Clerk of the House)

3:05 (Time), 04-11-17 (Date)

April 11, 2017 (2:56pm) Sara Fleming, Secretary Phone: 444-4709

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB268 DATE 3/31/17

MOTION Be Concurred In as Amended

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		✓
REP. VIRGINIA COURT, VICE CHAIR	✓		✓
REP. KATHY KELKER	✓		
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP	✓		
REP. ELLIE HILL-SMITH	✓		
REP. NATE MCCONNELL		✓	
REP. KIRK WAGONER	✓		✓
REP. MATT REGIER	✓		
REP. BILL HARRIS		✓	
REP. LOLA SHELDON-GALLOWAY		✓	
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY	✓		✓
REP. SHANE MORIGEAU	✓		
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB268 DATE 3/31/17

MOTION Be Amended

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	√		√
REP. VIRGINIA COURT, VICE CHAIR	√		√
REP. KATHY KELKER	√		
REP. BOB BROWN	√		
REP. BARRY USHER	√		
REP. DALE MORTENSEN	√		
REP. JENNY ECK	√		
REP. LAURIE BISHOP	√		
REP. ELLIE HILL-SMITH	√		
REP. NATE MCCONNELL	√		√
REP. KIRK WAGONER	√		√
REP. MATT REGIER	√	√	
REP. BILL HARRIS		√	
REP. LOLA SHELDON-GALLOWAY	√	√	
REP. THERESA MANZELLA	√		
REP. CASEY KNUDSEN	√		√
REP. ZAC PERRY	√		√
REP. SHANE MORIGEAU	√		
REP. ALAN DOANE, CHAIR	√		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SJ 15 DATE 3/31/17

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		✓
REP. VIRGINIA COURT, VICE CHAIR		✓	✓
REP. KATHY KELKER		✓	
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP		✓	
REP. ELLIE HILL-SMITH		✓	
REP. NATE MCCONNELL		✓	
REP. KIRK WAGONER	✓		✓
REP. MATT REGIER	✓		
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY	✓		
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		✓
REP. ZAC PERRY		✓	✓
REP. SHANE MORIGEAU		✓	
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 179 DATE 3/31/17

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR		√	
REP. VIRGINIA COURT, VICE CHAIR		√	√
REP. KATHY KELKER		√	
REP. BOB BROWN		√	
REP. BARRY USHER		√	
REP. DALE MORTENSEN	√	√	
REP. JENNY ECK	√		
REP. LAURIE BISHOP	√		
REP. ELLIE HILL-SMITH		√	√
REP. NATE MCCONNELL		√	
REP. KIRK WAGONER		√	√
REP. MATT REGIER		√	
REP. BILL HARRIS		√	
REP. LOLA SHELDON-GALLOWAY		√	
REP. THERESA MANZELLA		√	
REP. CASEY KNUDSEN		√	
REP. ZAC PERRY	√	√	√
REP. SHANE MORIGEAU	√		
REP. ALAN DOANE, CHAIR		√	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB117 DATE 3/31/17

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR		✓	✓
REP. KATHY KELKER		✓	
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP		✓	
REP. ELLIE HILL-SMITH		✓	✓
REP. NATE MCCONNELL		✓	
REP. KIRK WAGONER	✓		✓
REP. MATT REGIER	✓		
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY	✓		
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY		✓	✓
REP. SHANE MORIGEAU		✓	
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB99 DATE 3/31/17

MOTION Be Amended

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR		✓	✓
REP. KATHY KELKER		✓	
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP		✓	
REP. ELLIE HILL-SMITH		✓	✓
REP. NATE MCCONNELL		✓	
REP. KIRK WAGONER	✓		
REP. MATT REGIER	✓		
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY	✓		
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY		✓	✓
REP. SHANE MORIGEAU		✓	
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 90 DATE 3/31/17

MOTION Concur in as Amended

NAME	AYE	NO	PROXY
REP. SETH BERGLEE, VICE CHAIR	✓		
REP. VIRGINIA COURT, VICE CHAIR		✓	✓
REP. KATHY KELKER	✓	✓	
REP. BOB BROWN	✓		
REP. BARRY USHER	✓		
REP. DALE MORTENSEN	✓		
REP. JENNY ECK		✓	
REP. LAURIE BISHOP		✓	
REP. ELLIE HILL-SMITH		✓	✓
REP. NATE MCCONNELL	✓	✓	✓
REP. KIRK WAGONER	✓		✓
REP. MATT REGIER	✓		
REP. BILL HARRIS	✓		
REP. LOLA SHELDON-GALLOWAY	✓		
REP. THERESA MANZELLA	✓		
REP. CASEY KNUDSEN	✓		
REP. ZAC PERRY		✓	✓
REP. SHANE MORIGEAU	✓	✓	
REP. ALAN DOANE, CHAIR	✓		

19 MEMBERS

The Big Sky Country Jenny

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the ~~State Administration~~ Judiciary Committee.

I desire to leave my proxy vote with Rep. _____.

BILL	AYE	NO
SB29	✓	
SB002901	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. _____ (Signature) Date 03/31/2017

Ecke

Shane

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

BILL	AYE	NO
SB26	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. _____ Date 03/31/2017
(Signature)

Ellie

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

BILL	AYE	NO
SB 29	✓	
SB002901	✓	
SB 99		✓
SB009901, AHT		✓
SB 30	✓	
SB 26	✓	
SB 117		✓
SB179		✓
~~SJ15~~		

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. Nate McConnell for any amendments proposed on this date.

Rep. Ellie Hill Smith
(Signature)

Date 03/31/2017

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Beyer.

BILL	AYE	NO
SB 99	X	
SB 30	X	
SB 26	X	
SB 117	X	
SB 179		X
SJ 15	X	
SB026801.AJB	X	
SB 268	X	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. Berglee for any amendments proposed on this date.

Rep. _____ Date 3/21/17
(Signature)

a wagner

The Big Sky Country Virginia

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

BILL	AYE	NO
SB 29	✓	
SB 002901	✓	
SB 99		✓
SB 009901. AHT		✓
SB. 30	✓	
SB 26	✓	
SB 117		✓
SB 179		✓
SJ 15		✓
SB 268	✓	
SB 026801. AJB	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. Virginia Court
(Signature)

Date 03/31/2017

Zac

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 65TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

BILL	AYE	NO
SB 29	✓	
SB 002901	✓	
SB 99		✓
SB 009901, AHT		✓
SB 30	✓	
SB 26	✓	
SB 117		✓
SB 179		✓
SJ 15		✓
SB 268	✓	
SB 026801, AJB	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. _____ (Signature)

Date 03/31/2017

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 31, 2017
SB 250 - Revise laws for prosecutorial immunity for Marsy's law
Sponsor: **Sen. Nels Swandal**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Rich McLane	MACoP, city of BZN	X		
Jon Bennion	MT DOJ	X		
Kelly Lynch	MT League of Cities & Towns	X		
Sara Sexe	City of Great Falls	X		
MARK MURPHY	MCHA, MPPA	X		
Jeannie Cotton	Corrections	X		
Al Smith	MTLA			X
DAVE GALT	MSPOA	X		
Chuck Denowh	Marsys Law for All			X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 31, 2017
SB 197 - Require child sexual abuse prevention efforts
Sponsor: **Sen. Terry Gauthier**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
TERRY KAHN	SELF	✓		
Greg Derrington	MMA	x		
Abigail St. Lawrence	MAC	X		
Robin Turne	MCHASN	✓		
Craig Maher	Private Individual			X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 31, 2017
SB 22 - Revise laws re termination of parental rights when child is result of rape
Sponsor: **Sen. Sue Malek**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Deb Matteucci	MTBCC	✓		
Jon Bennion	MT DOJ	✓		
Robin TURNER	MCADSV	✓		
Shantelle Graynor	Missoula Relationship Violence Services	X		
Hannah Stark	Advocate - MT State	✓		
Brandi Ries	Ries Law Group PC	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 31, 2017
SB 153 - Revise laws on strangulation of a partner or family member
Sponsor: **Sen. Margaret (Margie) MacDonald**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Marty Lambert	Gallatin City	X		
MARK MURPHY	MCAR MACOP MPPA	X		
Shantelle Gaynor	MSLA Relationship Violence Services	X		
Deb Matteucci	MBCC	X		
Al Olson	DOJ	X		
Juli Pierce	Yellowstone City	X		
Ben Halverson	City of Billings	X		
Hannah Stark	Advocate - MT State	X		
Robin Turner	MCADSV	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

ADDITIONAL
DOCUMENT

Amendments to Senate Bill No. 197
3rd Reading Copy

Requested by Senator Terry Gauthier

For the House Judiciary Committee

Prepared by Padraic McCracken
March 22, 2017 (2:43pm)

1. Title, page 1, line 4.
Strike: "REQUIRING"
Insert: "ALLOWING"

2. Title, page 1, line 6.
Following: "~~TRAFFICKING~~"
Insert: "AND CHILD SEX TRAFFICKING"

3. Page 1, line 14.
Following: "**~~trafficking~~**"
Insert: "**and child sex trafficking**"

4. Page 1, line 15.
Strike: "shall"
Insert: "may"

5. Page 1, line 16.
Following: "~~trafficking~~"
Insert: "and child sex trafficking"

6. Page 1, line 16.
Strike: "must"
Insert: "may"

7. Page 1, line 17.
Following: "abuse"
Insert: "and child sex trafficking"

8. Page 1, line 21.
Following: "~~trafficking~~"
Insert: "and child sex trafficking"

9. Page 1, line 22.
Following: "~~trafficking~~"
Insert: "and child sex trafficking"

10. Page 1, line 27.
Following: "ABUSE"
Insert: "and child sex trafficking"

11. Page 1, line 28.
Following: "ABUSE"
Insert: "and child sex trafficking"

12. Page 2, line 1.
Following: "~~trafficking~~"
Insert: "and human trafficking"

13. Page 2, line 9 through line 10.
Strike: section 3 in its entirety

- END -

ADDITIONAL DOCUMENTS

MEMORANDUM

To: Members of House Judiciary

From: Kelly A. Lynch, Deputy Director/General Counsel
Montana League of Cities and Towns

Date: March 30, 2017

Re: Statutory Provisions for Disposal of Certain Property – SB 200

The Montana statutes have existing provisions for the disposal of evidence seized in relationship to a crime, firearms, biological evidence, abandoned vehicles, intangible personal property, and livestock. SB 200 will provide a new process for the disposal of lost or unclaimed tangible personal property that comes into the possession of law enforcement, and provide a streamlined process for the disposal of property that was seized as evidence in a case heard in a court of lower jurisdiction. The provisions of SB 200 will only change the process currently set forth for the disposal of evidence seized in a case in 46-5-307, MCA; the other provisions of law will remain in effect.

Section 46-5-307, MCA – Petition process for destruction, disposal, or use of evidence. This statute provides the current process for disposal of property seized as evidence in a case. Requires petition to the court and court order for disposal of property. Requires contraband to be destroyed, or in some circumstances, allows for contraband to be used for law enforcement training purposes. SB 200 would streamline this process for evidence seized in misdemeanor and other cases brought in courts of limited jurisdiction, providing 6 months for owner to claim property after conclusion of the case.

Section 46-5-313, MCA – Controls disposal of firearms held by law enforcement when legal owner cannot be determined. Law enforcement must sell the firearm to a licensed dealer; proceeds must be deposited in general fund of the governmental entity. SB 200 will not have any impact on this section of law and it must still be followed.

Section 46-21-111, MCA – Controls disposal of biological evidence by law enforcement. Must be held minimum of 3 years after conviction or otherwise established by court order. SB 200 will not have any impact on this section of law and it must still be followed.

Section 61-12-401, MCA – Title 61, Chapter 12, Part 4 of the MCA provides the process for the removal and sale of abandoned vehicles by law enforcement. The law enforcement agency must provide published notification or certified mail notice, and if the vehicle is not claimed within 30 days the agency may sell the vehicle at a public auction. Junk vehicles may be disposed of as set forth in 75-10-521, MCA. Proceeds must be deposited in the county road or city street fund, as applicable. SB 200 will not have any impact on this section of law and it must still be followed.

Section 70-9-802, MCA – Unclaimed Property Act provides process for state to take custody of and deliver unclaimed intangible property, defined as money, gift certificates, unused tickets, stock interests, bonds, insurance amounts due, trust distributions, and tangible property held in a safe deposit box. This is the state unclaimed property system discussed at the hearing on SB 200. SB 200 would not have an effect on this statute; if a local governmental entity comes into possession of intangible property within the definition of the Unclaimed Property Act, it must be reported to the Department of Revenue to take custody of the property.

Section 81-4-401, MCA – These statutes regulate the containment of livestock. The statute provides a process for impounding such animals if running at large, specific provisions for notifying the owner and/or the Department of Livestock, and allows for the retention or killing of livestock as set forth therein. SB 200 will not affect these statutes and they must still be followed by local governments.

ADDITIONAL DOCUMENTS

February 1, 2017

Good Afternoon-

My name is Cat Otway, RN, SANE-A, SANE-P and I work for First Step Resource Center at St. Patrick's Hospital in Missoula, MT. I have been a nurse for 28 years and a forensic nurse for 10 years. My passion, experience and training allow me to help save lives by improving the knowledge and response of healthcare providers and law enforcement to non-fatal strangulation violence.

I strongly urge you to support SB 153. This bill directly addresses the domestic violence issues we see across Montana. Most states that currently have a strangulation statute are adding "suffocation" to the statute. Currently, there are 41 states with a "Strangulation/Suffocation" law. Montana needs to get it right the first time. As a sexual assault nurse, we know that 25% of all sexual assaults include a strangulation/suffocation component. Suffocation is often overlooked as a method of strangulation, but often used during the assault.

My particular focus of forensic nursing has been on the topic of strangulation. Since 2010, I have conducted numerous presentations to nurses, physicians, law enforcement officers, judges, social workers, advocates, dentists, attorneys, and emergency medical/ first responders throughout Montana and Wyoming. I am often called on as an expert witness to testify and educate jury members on the lethality of strangulation injuries. In 2016, I attended the nationally-acclaimed Advanced Strangulation Course at the Training Institute on Strangulation Prevention (TISP) in San Diego and currently sit on the National Strangulation Task Force. I have authored two strangulation articles for the Missoulian on behalf of St. Patrick Hospital in order to reach a broad public audience and educate the community on the difference between choking and strangulation, with a powerful message that strangulation leads to unconsciousness within seconds and death occurring as quickly as 62 seconds. My knowledge of non-fatal strangulation is currently part of the curriculum at the Montana Law Enforcement Academy where I present to student and staff quarterly.

Passing a stand-alone strangulation statute makes sense to hold offenders accountable and protect future victimization, trauma, injury and death. Most recent research tells us that a man who strangles woman is more likely to shoot and kill a cop. By holding offenders accountable, we protect our entire community. Strangulation is not just a "slap in the face." It's the fastest way to kill someone without leaving a mark!

Strangulation is a highly lethal form of assault. The anatomy of the human neck contains muscles, vessels, cartilage, and bone. Strangulation occurs when external pressure is applied to the neck and the blood and/or the air supply is blocked from getting to the brain. Damage to the carotid and/or jugular vessels may result in a dissection of the vessel, resulting in blood clots that can later dislodge, go straight to the brain, leading to a stroke or death. Vocal changes occur in 50% of strangulation victims. Patients experience excruciating pain. Strangulation is an anoxic event, meaning the blood supply is cut off to the brain, depriving the victim of oxygenation, and brain cell quickly die. The trauma of strangulation is

a neurological event. Symptoms may include but are not limited to: loss of memory, behavior changes, headaches, vomiting, blood-red eyes, visual changes, swelling of neck structures, chest pain, bruising, abrasions, difficulty swallowing, sore throat, ringing in the ears, loss of hearing, respiratory distress, difficulty breathing, carotid artery dissection, stroke and eventually death. Strangulation remains a high lethality indicator. Research tells us that a woman who has been strangled by her partner and survives is 800% more likely to a victim of homicide by this same partner at a later time.

Once again, passing this statute keeps Montana on par with other states that have done the right thing. Most importantly, it would hold offenders accountable for their torturous behavior. Montana should not be in the last 9 states without a strangulation/suffocation statute.

I urge you to support SB 153. Let's do the right thing the first time.

Sincerely,

--Cat Otway